IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 291

UNION BROKERAGE COMPANY, A CORPORATION,
Petitioner,

vs.

NORMAN G. JENSEN AND CURTIS M. RIME,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA.

BRIEF FOR PETITIONER

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OPINIONS BELOW

The Findings of Fact, Conclusions of Law and Order for Judgment of the District Court of Minnesota are found at pages 123-138 of Record. The "memorandum" of the District Court appears at page 138, Record. The opinion of the Supreme Court of Minnesota is reported in 9 N. W. R. (2nd), beginning at page 721 and appears at pages 142-158, Record.

JURISDICTION

The decision of the Supreme Court of Minnesota, which Petitioner seeks to have reviewed, was filed May 14, 1943, and the judgment entered thereon was entered on May 25, 1943.

The Petition for a Writ of Certiorari was filed on August 25, 1943, and was granted October 11, 1943.

The jurisdiction of this Court is invoked under Sec. 237 (b), The United States Judicial Code, 28 U. S. C. A., Sec. 344 (b), as amended.

The jurisdictional grounds are stated at length at pages 13 to 28 in the Petition for Writ of Certiorari under the heading "Jurisdictional Statement."

QUESTIONS PRESENTED

Conceding that the State of Minnesota may impose such restrictions as she may see fit as prerequisite conditions for allowing a foreign corporation to come into the State to do business therein where the business of such corporation has no substantial relation to interstate or foreign commerce, the following questions are presented:

1. Where, as here, a corporation, organized under the laws of North Dakota, is engaged in the business of a customhouse broker under license granted by the United States Treasury Department, pursuant to an Act of Congress, for a United States customs collection district embracing the States of North Dakota, South Dakota, and the County of Kittson, in Minnesota, may the State of Minnesota deny such a customhouse broker the right to sue in her courts for the protection of its property because of its failure to comply with the statute which provides that a foreign corporation cannot bring an action in the courts of Minne-

sota without a Certificate of Authority to do business therein?

2. Do the requirements of the Minnesota Foreign Corporation Act burden or obstruct "commerce," within the purview of clause 3, Sec. 8, Art. I of the Constitution of the United States, when applied so as to forbid corporation customhouse brokers from the use of her courts without complying with the provisions of the Minnesota Foreign Corporation Act? (Appendix I, *infra.*)

3. May the State of Minnesota impair or limit the right of the Petitioner, which is a North Dakota corporation duly licensed by the United States Treasury Department to engage in the business of a customhouse broker, to exercise freely the privileges arising from its Federal license as a customhouse broker, in that part of the district which lies within the borders of Minnesota?

4. Is the ruling of the Supreme Court of Minnesota an interference with, and an attempt to nullify, an Act of Congress enacted to protect the revenue of the United States and her commerce with a foreign country?

5. Is a Federally licensed customhouse broker an instrumentality employed by the Government of the United States to facilitate the free flow of commerce between foreign countries and the United States, and to protect the revenue of the Federal Government?

6. By deciding that Petitioner must comply with the provisions imposed by the Minnesota Foreign Corporation Act (Ch. 200, Laws of Minnesota, 1935, Appendix I, *infra*) before it may appeal to her courts for judicial relief, has the Petitioner been denied the privileges and immunities guaranteed by the Constitution of the United States?

STATUTES INVOLVED

The statutes involved are the Minnesota Foreign Corporation Act, Ch. 200, Laws of Minnesota, 1935; the Tariff Act of 1930, as amended, and the "Rules and Regulations Relating to Customhouse Brokers," issued by the United States Treasury Department, Office of the Secretary, Washington, April 16, 1936, Department Circular No. 559, (filed with the Division of the Federal Register, April 20, 1936, 9:48 a. m.), as amended.

The relevant and material parts of these laws, Rules and Regulations, are printed in the Appendix, *infra*.

STATEMENT OF THE CASE

This action had its origin in a suit brought in 1941 by Petitioner, a North Dakota corporation, against the Respondents. That suit was brought in the District Court of Kittson County, 14th Judicial District, Minnesota (R. 1-18).

Ever since March, 1928, and before, Petitioner has been doing business continuously as a corporation customhouse broker, licensed by the United States Treasury Department (R. 1). Its principal place of business has been Portal, Burke County, North Dakota (R. 124). Its license was granted for United States Customs Collection District 34, also known as the Dakota District (R. 1).

The suit was brought to secure a decree adjudging that the Respondents (defendants) account to Petitioner for the profits realized from July 1, 1940, on the theory that Respondent Jensen, having done business at Noyes, Minnesota, with Petitioner's clients, in breach of his fiduciary duties owing to Petitioner, held the profits from that brokerage business as a constructive trustee of the Petitioner (R. 15, 16).

Under the charge of conspiracy, Curtis M. Rime, attorney in fact of Mr. Jensen, was joined as defendant (R. 6-12).

The essential and controlling facts material to the consideration of the questions here presented are:

On September 6, 1938, Norman G. Jensen and Petitioner were each a customhouse broker at Portal, North Dakota. Mr. Jensen had operated for about a year as an individually licensed customhouse broker, while Petitioner had been doing business as a corporation, duly licensed (R. 126, 127, 3, 31).

On September 6, 1938, Petitioner bought out Mr. Jensen's business (R. 17, 18, 127, Exhs. B, B-1, B-2 and C).

On concluding this purchase of Mr. Jensen's business, and as a part of the bargain, Norman G. Jensen was, on the same date, elected director, president and treasurer of Petitioner, and designated as the manager of its customhouse brokerage business. He immediately accepted those offices and positions of trust, and as such took possession and charge of Petitioner's books, property, correspondence and records. He continued to hold, and he continuously professed and represented that he was discharging the duties of, those offices of trust until November 5, 1940, when he resigned at the request of Petitioner's Board of Directors (R. 4, 5, 130).

On July 1, 1940, in accordance with plans it had perfected during previous weeks or months, the Canadian Pacific Railway Company, which was the only railroad entering Portal, North Dakota (the home office of Petitioner), changed the routing of its freight shipments from Canada into the United States. This change took about 95 per cent of the freight shipments away from the Port of Portal, North Dakota, and routed them through Winnipeg and Emerson into the United States through the Port of Noyes, in Kittson County, Minnesota. Noyes is located in United States Customs Collection District 34. This change transferred

at least 95 per cent of Petitioner's business from Portal, North Dakota, in District 34 to Noyes, Minnesota, in the same district (R. 6, Sec. IX (a), 46, 47, 48, 131).

Taking advantage of his advance and inside information about this change in the routing of freight shipments by the Canadian Pacific Railway Company, effective July 1, 1940, Respondent Jensen, while yet president, director and treasurer of the Petitioner and the manager of its business, conceived the scheme of capturing his principal's business for himself by "following" Petitioner's business to the Port of Noyes, there to carry on the business of Petitioner in his own name, for his own use and for his own profit. His associate and controlling directors of the Petitioner were two widows, Mrs. Annie Kramer of Portal, North Dakota, and Mrs. Nan W. Anderson of St. Paul. By various means he successfully concealed for some time his execution of this scheme. By November 5, 1940, his fraudulent breach of duty had been discovered. He was asked to, and did, resign on November 5, 1940; but he continued thereafter to claim and operate Petitioner's business as his own at Noyes, Minnesota (R. 46, 47, 49, 50, 51, 52, 56, 58, 59, 65, 68, 116, 117, 131-134, Exh. N).

Petitioner thereupon in 1941 brought this suit in the District Court for Kittson County, Minnesota (R. 1-18).

By their answer to the complaint, and by timely objections at the commencement of, and during, the trial, the Respondents, among other defenses, pleaded and urged that since the Petitioner is a North Dakota corporation, and had not qualified as a foreign corporation under the Minnesota Foreign Corporation Act (Appendix I, *infra*), the District Court of Minnesota was without jurisdiction to hear and determine the cause (R. 18, 29, 30, 118, 168).

Petitioner answered this defense by saying that while it had not obtained a Certificate of Authority to do business in

Minnesota pursuant to the Minnesota Foreign Corporation Act, the Court nevertheless had jurisdiction over the parties and the subject of the action because Petitioner was engaged in foreign commerce, and that therefore the Minnesota Foreign Corporation Act, imposing burdens and restrictions on foreign and interstate commerce, did not apply and could not be used to prevent it from access to the Minnesota courts (R. 30).

The District Court of Minnesota overruled that defense of the Respondents, and held "that the customhouse brokers, involved herein, are established as federal instrumentalities and are engaged in interstate commerce in facilitating the free flow of commerce between the United States and the Dominion of Canada" (R. 122, 125).

Judgment was entered against the Respondents in the District Court of Minnesota, Kittson County, in favor of the Petitioner, on August 20, 1942, for $10,324.80, in harmony with that ruling of the District Court (R. 139, 140).

Thereupon Respondents appealed to the Supreme Court of Minnesota where they again contended that the District Court had erroneously assumed jurisdiction of this cause and had therefore rendered a void judgment because Petitioner had not obtained a Certificate of Authority pursuant to the Minnesota Foreign Corporation Act (R. 141, 147, 168).

Petitioner answered in the Supreme Court of Minnesota, as it had done in the District Court, that its business was so closely related to foreign commerce that to enforce the provisions of the Minnesota Foreign Corporation Act against it was to burden and obstruct "commerce" within the purview of Art. I, Sec. 8, clause 3 of the Constitution of the United States.

The Supreme Court of Minnesota reversed the District Court, ordered a dismissal of the case as prayed for by the

Respondents in the lower court, and held:

> "The broker acts as an independent contractor to perform this personal service for the shipper. He does not come into contact with the commerce itself in any way in so far as its actual movement is concerned. He is at the most an aid or facility to the commerce and but remotely, if at all, affects it. We fail to see how such a broker is an instrumentality of the commerce. Therefore, it seems to us that the statutory requirement (of the Minnesota Foreign Corporation Act) is not an obstruction or interference with interstate commerce" (R. 153, 154).

Petitioner thereupon applied for and obtained this Writ of Certiorari to review the decision of the highest court of the State of Minnesota.

The issues, reduced to their narrowest compass, may therefore be stated in the form of the following questions:

Is the business of Petitioner as a customhouse broker so closely related to foreign or interstate commerce that, within the purview of Art. 1, Sec. 8, clause 3 of the Constitution of the United States, it is engaged in "commerce"? Are the provisions of the Minnesota Foreign Corporation Act a "burden" and an "obstruction" to "commerce" and therefore void or inapplicable when used to deny to Petitioner the right to sue in the courts of Minnesota for the protection of its property? May the State of Minnesota reduce the area within which Petitioner is empowered to do business as a customhouse broker by denying it the right to "do business" or to sue in that part of the district which lies in Minnesota, and which is included in the United States Customs Collection District as defined by the President of the United States, pursuant to authority of Congress? Did the Supreme Court of Minnesota err in reversing the holding of the District Court by ruling that a customhouse broker "does not come into contact with the commerce itself in

any way in so far as its actual movement is concerned" and in further holding that the provisions of the Minnesota Foreign Corporation Act are not "an obstruction upon the commerce itself nor an interference therewith"? (R. 153, 158.)

The character of this problem, as well as the basic claims of the respective parties to this cause will be made plain by a brief recital of the indisputable and essential facts established by the evidence in this case.

The "Rules and Regulations Relating to Customhouse Brokers" is Exhibit A in this case (Appendix II, *infra*). These "Rules" have been "promulgated" by the Secretary of the Treasury "by virtue of, and pursuant to, the authority vested in me, including the authority conferred by Sec. 641 of the Tariff Act of 1930, as amended" (Appendix II, *infra*).

These Rules and Regulations define the word "customhouse broker" to include "any person who, acting on behalf of others, transacts customs business not limited to a kind described in Sec. 7 of these regulations" (Sec. 2, Appendix II, *infra*).

Sec. 7 of Rules and Regulations relating to Customhouse Brokers, provides that persons may clear their "own importations" (Secs. 1483, 1484, 1641 (e), Title 19, U. S. C. A.).

No one is authorized to transact business "as a customhouse broker without a license granted" by the Treasury Department, and "no representatives of the Treasury Department shall recognize or deal with any person transacting the business of a customhouse broker . . . unless such person is licensed as a customhouse broker. . . ." (Sec. 1 (a) and (b), Appendix II, *infra*, and Sec. 1641, Title 19, U. S. C. A., Appendix III, *infra*.

"Person" includes "corporations, associations and partnerships" (Sec. 2 (d), Appendix II, *infra*).

"To protect importers and the revenue of the United States," the business of customhouse broker is closely and

minutely regulated, supervised and controlled by the Treasury Department. This regulation, control and supervision is exercised and enforced, as will be seen later, to "protect importers and the revenue of the United States," and to foster trade with foreign nations by providing, so far as human ingenuity may do so, prompt and effective control over the money involved in those transactions (*In re Landeck & Merrill*, 20 Fed. (2nd) 249, and Sec. 1 (b), (d), Sec. 2 (b), Sec. 3 (d), Sec. 8 (a), (b) and (g), Sec. 9, Appendix II, *infra*).

The books and records of a customhouse broker are subject to inspection by the Treasury Department. Indeed it is the mandatory duty of the customhouse broker to keep his records, books and correspondence "on file for at least five years" and to maintain them "in such manner that they may readily be examined" by any "duly accredited agents of the United States on demand therefor" during five years "or within such longer period of time during which they remain in the possession of the broker"; and the broker must also be prepared to furnish "such additional information regarding his activities *as a licensed customhouse broker*, as such agents may require" (Italics supplied) (Sec. 8 (a), (b) and (g), Appendix II, *infra*).

The broker must pay over to the Government "when due" all money payable as duty or tax on merchandise cleared, and account for all moneys received for or from his shipper clients under penalty of losing his license (Sec. 9, (m), Appendix II, *infra*).

The law and regulations require, in the case of a corporation licensed as customhouse broker, that at least two of its officers be individually licensed (Sec. 1 (c), Appendix II, *infra*, and R. 33).

The broker's duties and obligations are found stated in Exhibit A, and in Title 19, U. S. C. A., Appendices II and

III, *infra*. Additional duties and regulations of the customhouse broker and his business may be promulgated by the Secretary of the Treasury (Sec. 9 (a), Appendix II, *infra*).

When Petitioner bought out Mr. Jensen's business, or when Mr. Jensen sold his business to Petitioner on September 6, 1938, the two officers individually licensed were Mrs. Kramer's son, Harry, and Minton V. Carlson.

To make room for Mr. Jensen in the corporate structure of Petitioner, and to comply with this requirement on a corporation customhouse broker, Petitioner bought up the shares of stock standing in the name of Minton V. Carlson, procured his resignation, issued the 25 shares of stock to Mr. Jensen and elected him to the offices mentioned. In this manner Mr. Jensen became, on the conclusion of the transaction of September 6, 1938, one of the two officers individually licensed, and his license became committed to the use of the Petitioner in its business (R. 126 (11), 127 (14), 129 (15)).

Respondent testified:

> "I don't know whether I have your question right or not; I will try to answer it by making this statement; the majority of a broker's business is clearing shipments from Canada or some other foreign country shipped through a port at which a broker is working, into the United States" (R. 35).
>
> — — —
>
> "Q. And so to make this attempted investigation clear and simple, a customhouse broker is rendering services to both the Government of the United States and the importer, isn't that right?
>
> A. That's right.
>
> Q. And that is all his business?
>
> A. No, he renders services to exporters.
>
> Q. All right, we'll add that to it—is that all of his services?
>
> A. It is all I can think of right now" (R. 36).

He further testified:

"Q. And as a matter of fact you did set up an office at Noyes?

A. I did set up an office in Noyes.

Q. And at the time you set it up you were the manager, the actual manager and the president and treasurer and director of the plaintiff corporation, isn't that right?

A. I was.

Q. And in setting up that office at Noyes, you used the same license which as an officer and manager you used to fill the requirements of the plaintiff by the laws governing licensed customhouse brokers?

A. Yes, I used my individual license.

Q. And that individual license had been committed to the business of the plaintiff by reason of the arrangement and bargain made on September 6, 1938?

A. That license was to be used as one of the two licenses to enable the Union Brokerage Company to maintain its license to Portal.

Q. Or anywhere else in the district—in District No. 34 of which Noyes is a part?

A. Yes" (R. 49, 50).

As indicating the nature and characteristics of this business, and how Respondent had secretly prepared to follow the Petitioner's business to Noyes, there to capture it for himself, Mr. Jensen admitted that before June 29, 1940, he trained Mr. Rime for about five days in clearing shipments (R. 131 (22), 132, 133, 51, 58, 60, 61, 62, 64, 65, 67), and that before July 1, 1940, he executed and filed with the Deputy Collector of Customs at Noyes the power of attorney which he granted to Mr. Rime to enable him to clear shipments at the Port of Noyes in Mr. Jensen's name (R. 58, 59, 64, 68, 92-94, 96-103, 104).

On June 29, 1940, Mr. Jensen, known as the president of Petitioner, instructed the chief clerk of the railways at Noyes, Minnesota, as follows:

"Kindly deliver to Mr. Curtis Rime all bills of lading and invoices for *shipments to be cleared through customs* by Norman G. Jensen or Union Brokerage Company" (Italics supplied) (Exh. Q, R. 132, 107).

On July 3, 1940, Mr. Jensen confirms the fact that a customhouse broker must have the title papers to merchandise moving in foreign commerce in order to carry on the business, for he wrote to H. E. Clark, one of the officers of the Soo Railway, in part, as follows:

"I talked to Mr. Plow this afternoon (Assistant Freight Traffic Manager of the C. P. R. with offices in Winnipeg) and his assistant informs me that *they will see that the C. P. R. agent at Emerson will detach the bills of lading and invoices from the waybills on the merchandise sent to me to be cleared.* I will appreciate anything that you can do to assist in this matter" (Italics supplied) (Exh. N, R. 50).

Later he explained this statement found in Exhibit N by testifying that his meaning was:

"Just that the agent of the C. P. R. will give to me or to Mr. Rime *the bills of lading and the invoices on merchandise consigned to us to be cleared*, so that we could make the entry; in other words, we would get the bill of lading and the invoice from the Canadian Railroad Company . . . at Emerson" (Italics supplied) (R. 50).

He also admitted that "the bill of lading consigns the shipment to the customs broker at the Port of Entry" (R. 50).

The customhouse broker does not load nor produce the goods moving in interstate or foreign commerce. But, the customhouse broker, designated as such in the bill of lading and waybill, is a party to the importation handled by him from the point the shipment originates in Canada, or in any other foreign country, until he has released it from cus-

toms for delivery to the ultimate consignee or importer. The merchandise loaded on cars, say, at Vancouver, B. C., for shipment to a wholesale house in Chicago, for example, cannot proceed beyond the Port of Entry until it is "cleared of customs" (R. 70, 111, 112). The shipper and the importer working together, or the shipper on his own, usually at the point of origin, designate a broker working at the Port to "clear" the shipment, or get it out of the control and custody of the Collector of Customs that it may be delivered to the buyer. The name of the "broker" designated is shown on the bill of lading and waybill. This bill of lading invests the broker with the title to the shipment for clearance purposes. The bill of lading, invoice and some other required papers are attached to the waybill. The waybill stays with the car until the goods have been delivered to the importer at the point of ultimate destination. But regardless of the final destination, and regardless of whether the goods shipped prove to be dutiable, the merchandise coming from Canada cannot leave the Port of Entry and the carrier cannot proceed with the goods covered by the bill of lading to the ultimate consignee, until the Collector of Customs has been satisfied and authorizes the further movement of that merchandise. The title of the broker dates from the time the bill of lading is executed and delivered to the carrier by the shipper at the point of origin and continues until the merchandise has been released from "customs." Thus the importers and the revenue of the United States are "protected" (Exhs. DDD and EEE, R. 74, 81 (ff. 2, p. 599 of Original Record), 60, 62, 63, 64, 67, 69, 70-77, 83-86, 90, 91, 109).

The merchandise covered by the bill of lading when it enters a Port is subject to the payment of duty unless it comes within some exception in the Tariff Act. The broker estimates the duty called for by the Tariff schedule, applied to

the particular kind of merchandise shown on the invoice (R. 112, 115, 116, Secs. 1481-1483, 1485, 1505, Appendix III, *infra*).

The duty so computed and estimated is paid by the broker as a condition for the "entry" of the goods. His estimate of the amount of money due to the United States is not conclusive on the United States, nor on the Collector, to whom it is paid as a rule. The correction, if any be needed, falls back on the broker who is the "owner" of the goods so far as the Government is concerned. He or his surety must make good any additional duty which may later be required. Likewise, he must refund to the shipper or importer any money on account of an excessive charge (R. 115, 116).

When the inspection has been made and the goods in the custody of customs has been "entered" the Collector releases the shipment, and the railroad may then proceed on its journey to deliver it to the ultimate consignee (R. 111, 112). Only then does the broker's business and contact with foreign commerce end. The broker's liability for the payment of the duty, if erroneously computed, continues indefinitely.

The broker may elect to bill his fees and the amount of the estimated duty against the carrier and receive from the railroad an advancement of both. If he does not elect to do this he must either draw on his client's money to pay the amount due to the United States, or advance his own money and bill his client later. The Government does not extend credit.

Mr. Phillips, cashier of the Soo and Great Northern Railways, of Noyes, testified:

> "Q. When goods come from across the border, subject to entry here in the United States, what is done by the railway or by you?
>
> A. The papers are stripped . . . that accompany the shipment to be delivered to the customs broker

Usually a bill of lading and stock contract, invoices and veterinarian certificates—various papers of that kind. . . . The waybill stays in the railway office. – – – The waybill is the instructions to the railroad for the conductor handling the car. . . . They (the bill of lading and invoice) are delivered to the customs broker to whom they are consigned. . . . The conductor brings them into the depot. . . . They usually sort the bills in piles for the various brokers and remove the papers. . . . (If a bill of lading fails to show a broker consignee) the car is refused; that is refused—that is from the connecting line and we notify them of the fact. (The invoice alone is insufficient authority) the bill of lading has to be consigned to the broker" (R. 69, 70, 72).

"Q. And what does the waybill show?

A. Shows the car number, the date, waybill numbers, destination, originating station, the shipper, the route, the consignee, and hold-over for icing or other care, then the commodity would be stated, the weight, freight weight or rate, I mean amount to be collected, and there usually is, in fact almost always, a list of all papers that *accompany the shipment crossing the boundary* (Italics supplied).

Q. And does that paper you call the waybill indicate the name of the broker or does it not?

A. It usually does" (R. 73).

On his cross examination, Mr. Phillips testified:

"Q. In general, what is this instrument or thing which you call a bill of lading?

A. That's the order specified by the Interstate Commerce Commission or the Canadian Commission which has to be filled out to move a shipment.

Q. Well, isn't it in the nature of a request or demand on the part of a shipper to the railroad to ship certain things to a certain place?

A. Yes. . . .

Q. And now when the railroad receives bills of lading are there more than one copy of that bill of lading at the time?

A. The shipper receives two of them back after being receipted for by the railroad company. . . .

Q. How many are there all together as a rule?

A. Speaking of a Canadian railroad and the shipment crossing the boundary line there are usually four.

. . .

Q. Now, accompanying that bill of lading the railroad company gets, which I understand is in the nature of a request or a demand by the shipper, they, themselves make out an instrument called a waybill?

A. Y , sir.

Q. And that goes into the details as to the shipper and consignee and number of the car and type of merchandise and the tariff and all the rest of it?

A. Yes, that's the instrument which moves the car.

. . .

Q. Now, those two papers are put together, I suppose, the bill of lading and the waybill?

A. As far as to the bill of lading for customs purposes—yes, that's usual.

Q. Well, the conductor is the man who is in charge of those instruments on the freight train?

A. Yes.

Q. Now, there was another instrument which you referred to as the invoices, what are they?

A. The invoice is made out by the shipper or the owner of the goods showing the value, the amount and— . . .

Q. That's the invoice and it also accompanies the bill of lading and the waybill?

A. Usually although it can be mailed by the shipper to the customs broker.

Q. Now, you say there was a custom, general custom, of shippers when they wished to designate a particular broker, to make some form of designation on one of these instruments; which one would that generally appear upon?

A. It would be made by the shipper on the bill of lading but the railroad would have to show it on the waybill also.

Q. Now, then, if a shipper wishes to consign a shipment to a certain broker, we'll say, at Noyes, they should designate in some manner upon the bill of lading the name of the broker?

A. Yes.

Q. And the railroad company would also write the name of that broker upon the waybill?

A. That's correct.

Q. And then when that shipment arrives at the port of entry how would the broker come into possession of the bill of lading; from whom would he receive it?

A. From the railroad agent.

Q. The conductor, when he arrives, turns these bills of lading and waybills all over to the agent, does he?

A. Yes. - - -

Q. The agent then turns the bills of lading over to the broker, those on which his name is indicated?

A. Yes. - - -

Q. And what does the broker do with it then?

A. He would fill out—depending on the time of day—he would fill out certain forms for the customs so that inspection of the car could be made.

Q. And file that with the customs officials along with the bill of lading?

A. No, the bill of lading would not be filed until later; it can be filed as much as 48 hours later. . . .

Q. You had some way of determining when the inspection is completed?

A. We send men right with them. . . . -

Q. All right—then what does the broker do in order to obtain these advancements of fees and duties from the railroad company; what evidence does he present to the railroad company to get a draft for his brokerage and for the duty?

A. He presents a list, as they were called awhile ago, a clearance sheet. . . .

Q. He merely brings in a so-called clearance sheet in which he shows that he is entitled to brokerage on certain cars?

A. Yes. . . .

Q. —is it the practice and custom of the railroad company, the receiving railroad company in the United States to advance, in certain cases, the brokerage due to the customs broker?

A. Whenever it is asked for the law provides for that.

Q. That the railroad company pay it?

A. Yes.

Q. And also the duty upon the goods going to the government?

A. Yes.

Q. And the railroad company reimburses itself later, I suppose, from the consignee?

A. It is collected at the time the freight is collected. . . . The Interstate Commerce law reads that custom fees and brokerage fees will be advanced for collection from the consignee. . . .

Q. The Great Northern Railway Company during that period of time, advanced brokerage to Norman G. Jensen of $1,169.25?

A. Yes. . . .

Q. All of the figures then that are seen on here are brokerage?

A. Yes. . . .

Q. —and it purports to show the number of shipments on which brokerage was advanced and the figures have nothing to do with dollars at all but the figure 8,163 means that there were 8,163 different shipments upon which brokerage was advanced by the railroad company?

A. That's right. . . .

Q. And the other column is the number of shipments on which brokerage was not advanced—10,160?

A. Yes. . . .

Q. You didn't even handle them yourself?

A. I handled none of these applications for change in brokers. . . .

Q. But I'm trying—I'm thinking of a case where the broker specified isn't there to handle them and some other broker appears with the bill of lading. Take, for instance, a shipment sent to the Union Brokerage Company and the Union Brokerage Company has no man there to handle it for them and Jensen or Rime shows up; now, how does he acquire the right to handle that particular shipment?

A. The only way is by the connecting line taking it up with the shipper or the customs would not allow it to be entered. . . . ." (R. 83-88, 90).

Mr. W. F. Mackay, who is not only an honorable customhouse broker, but also possessed of an expert knowledge of the business and of the Tariff Act of 1930, as amended, testified for the Petitioner:

> "Q. Now, then, by stamping the invoice or signing the name of the broker to the invoice and leaving that with the bill of lading and—the original or duplicate then does the Collector dispatch an inspector to inspect the shipment to see— . . .
>
> A. No, he doesn't deliver the bill of lading; he delivers one copy of the invoice and a note on the back in some way that he has authority to clear that shipment, then the inspector goes out and makes an inspection of the shipment and the shipment is released, and, as far as the railroad is concerned, it goes forward.
>
> Q. In practice then that service of the broker aids the interstate and foreign commerce through the ports?
>
> A. Yes" (R. 111, 112).

The volume of the business done between July 1, 1940, and November 30, 1941, is indicated by Exhibit EEE (R. 399, 402).

Therefore, it is clear to the point of excluding all controversy to the contrary that the business of the customhouse broker is intimately connected with and a part of the foreign commerce between the Dominion of Canada and the United States, beginning at the point of origin in Canada, and continuing thereafter until the goods, consigned to him in Canada, have been cleared of United States Customs. Only when that service has been rendered may the goods be released for further transportation and delivery to the ultimate consignee.

SPECIFICATIONS OF ERROR

The Supreme Court of Minnesota erred:

1. In reversing the judgment of the District Court of Minnesota by holding that the Court had no jurisdiction over this cause of action because Petitioner had not obtained a Certificate of Authority to do business in Minnesota under the provisions of the Minnesota Foreign Corporation Act.

2. In holding in effect that Petitioner had no right to sue in the courts of Minnesota for the protection of its property notwithstanding the fact the the license granted to it by the Government of the United States expressly authorized it to do business in the County of the Forum.

3. In holding that a customhouse broker is not engaged in "commerce" within the purview of Art. I, Sec. 8, clause 3 of the Constitution of the United States.

4. In holding that the Minnesota Foreign Corporation Act does not burden, nor obstruct or interfere with the free flow of foreign commerce.

5. By holding in effect that Petitioner's business has no substantial relation to foreign commerce, but is local and intrastate business, and that the constitutional power of Congress over foreign commerce is in no way impaired by the provisions of the Minnesota Foreign Corporation Act.

6. By adjudging that Petitioner's suit should have been dismissed on the ground that it had no Certificate of Authority to do business in Minnesota.

7. In denying Petitioner the privileges and immunities guaranteed by Art. XIV, Sec. 1 of the Constitution of the United States.

SUMMARY ARGUMENT

This appears to be the first case directly involving the relation of a customhouse broker and his business to the "commerce with foreign nations" and to the administration of the nation's tariff system. It is a case of national scope and importance because (1) the rights and duties of the Petitioner are identical with the rights and duties of all customhouse brokers in the 48 United States Customs Collection Districts; and (2) the protection due to importers, the revenue of the United States, and the control by the Treasury Department over its licensees are directly affected by the decision rendered by the Supreme Court of Minnesota and by the decision to be rendered by this Honorable Court.

The rights and duties of licensed customhouse brokers are defined and prescribed by Act of Congress, and by the Rules and Regulations promulgated by the United States Treasury Department by virtue of Congressional authority, and the authority inherent in the office of the Secretary of the Treasury.

Petitioner owes its existence, as a corporation, to the laws of North Dakota, but its power to do business as a licensed customhouse broker is wholly and absolutely dependent on, and controlled by, the laws and regulations of the United States.

The "mechanics" of our tariff system, together with the duties of the customhouse broker, as defined by the Tariff Act of 1930, as amended, and the Rules and Regulations of the Treasury, promulgated pursuant to laws of Congress lead to only one conclusion, namely, that the customhouse broker is an integral factor, an instrumentality, devised for use in the conduct of our foreign commerce, and that through the use of his services by the Government and the per-

formance by him of his functions the importers and the revenue of the United States are protected.

Congress alone is given the power to regulate commerce with foreign nations and among the several states. "The courts can never take the initiative" in this field.

Parkersburg & O. River Transportation Co. vs. Parkersburg, 107 U. S. 691, 701, 27 L. ed. 584, 588.

"To regulate commerce" means to foster, protect and control commerce for the welfare of those immediately concerned and of the public at large.

Mondou vs. New York, N. H. & H. R. Co., 223 U. S. 1, 47, 56 L. ed. 327, 345.

Texas & N. O. R. Co. vs. Brotherhood of R. & S. S. Clerks, et al., 281 U. S. 548, 74 L. ed. 1034, 1046.

"To regulate commerce" is not synonymous with the power to destroy or impair the flow of commerce between the United States and foreign countries.

United States vs. Joint Traffic Assn., 171 U. S. 505, 43 L. ed. 259, 288.

For "commerce" as used in the Constitution means "intercourse for the purposes of trade" and includes transportation, purchase, sale and exchange of commodities between the citizens of the different states.

Carter vs. Carter Coal Co., 298 U. S. 238, 298, 80 L. ed. 1160, 1182.

Welton vs. Missouri, 91 U. S. 275, 280, 23 L. ed. 347, 350.

Pensacola Teleg. Co. vs. Western U. Teleg. Co., 96 U. S. 1, 9, 24 L. ed. 708, 712.

Activities, intrastate in character when separately considered, are nevertheless under the control of Congress "if they

have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions."

Schechter Poultry Corp. vs. U. S., 295 U. S. 495, 547, 79 L. ed. 1570, 1587.

Houston, E. & W. Texas Ry. Co., et al., vs. U. S. (Shreveport case), 234 U. S. 342, 351, 352, 58 L. ed. 1341, 1347, 1348.

There can be no closer relation of business activities to interstate commerce than is the case here. The enforcement of the Minnesota Foreign Corporation Act to the business of Petitioner delays, burdens and interferes with foreign commerce.

The Ports of Entry are so many "throats" through which the current of foreign commerce flows, in this instance, between the Dominion of Canada and the United States. If these throats become choked or obstructed, trade between these two countries becomes impaired, if not destroyed. Into to these throats are "fed" the currents of trade.

The goods which are lawful objects of importation between the two countries must be segregated from those not importable at the Ports of Entry. Those not importable are denied entry. The importable goods reach these throats for entry, and the Treasury Department exacts from these goods, with rare exceptions, the payment of the duty specified in the Tariff schedule before they are allowed to pass through these throats or Ports to their designated and ultimate destination. All these goods, exceeding $100.00 in value, whether subject to the payment of duty or not, must be "cleared" (Secs. 1481, 1482, Title 19, U. S. C. A.).

These goods arrive at the Port of Entry on board a common carrier for continuous transportation from the point of origin to the point of ultimate destination, under through

bills of lading. This "through" journey of the merchandise is by force of law interrupted at the Port of Entry, either temporarily or for an indefinite length of time, because, until the merchandise has been "cleared," the law places it in the custody of the Collector who acts for the Government of the United States to prevent importations contrary to law. This "seizure" and resulting custody is lifted when the carrier is allowed to proceed with the merchandise to the ultimate destination designated on the through bill of lading. This "lifting" is done only when the goods in the custody of the Collector have been inspected by the Collector or his agent and "entered." This "entry" may be made by the actual owner of the importations, or by the customhouse broker, who, if so designated on the bill of lading and waybill, is the owner of the merchandise in the custody of the Collector, so far as the Government is concerned, for purposes of clearance. The "entry" involves the payment of the duty, the identification of the merchandise with reference to the classification of the articles as defined in the Tariff schedule, a comparison with the invoice going with the bill of lading and waybill, the computation of the estimated duty, and the compilation of the required records for the office of the Collector and for the office of the broker for actual or potential use in the future.

If the broker has filed the required bond, duly approved, he has 48 hours in which to complete the "entry." This is allowed to give time for accurate compilation of the necessary records of each transaction, and is made possible or practicable because of the broker's bond which insures the Government against loss. The Tariff schedule is very complicated, and contains many exceptions from the general rules, affecting the computation of the estimated duty payable on the various goods accepted for importation. This 48 hour time helps to prevent errors in the computation,

and that time is used by the broker for completing the records of his entries as required by the Regulations.

The broker, in the interest of "commerce," is given the right to ask the carrier to advance his fees and the duty, both of which are then added to the carrier's own charges, the total in such cases being collected by the carrier from the actual owner or ultimate consignee at the point of destination.

When the broker who is the constructive owner has secured the inspection of the merchandise on board the train, but then in the "custody" of the Collector until "released," and the Inspector gives his approval, after the broker has shown his right to "enter" the goods, that is, shown his right to assume the liability to pay the estimated duty, and any additional amount of duty which later may be found due, to the satisfaction of the Collector, then the merchandise is released and the carrier is authorized to resume the interrupted journey (R. 111, 112). The bond on file with the Collector insures the discharge of the broker's liability, not on one or two shipments, but for all which he "enters."

This done, the broker proceeds, according to law and the Rules and Regulations, to prepare for his own office and for the office of the Collector the lists or clearance sheets, the reports, etc. These are some of the records which the law and the Regulations require the broker to keep available for the Government for at least five years (Sec. 8 (a), (b) and (g), Appendix II, *infra*).

The broker does not follow or handle the merchandise "cleared" after it has been released from customs except that if an error is discovered in the computation of the duty which warrants it he may get the shipment recalled to the custody of the Collector for one or more purposes specified in the law.

This is the business of a customhouse broker, whether the

broker be an individual or a corporation. This was the sole business of the Petitioner. The Record shows no other, and no other is claimed. The estimated duty is computed and paid at the broker's risk since the Collector is immune from liability under the terms of the Tariff Act of 1930, as amended (Sec. 1513, Title 19, U. S. C. A.).

The actual owner has the right to "enter" his own importations; but the existence of this right, and even its use by those who choose to exercise it, cannot, and does not, alter the inherent nature and characteristics of the business of a customhouse broker. The actual owner of the importations may experience difficulty in making a satisfactory entry, since he, too, if he does "enter" his merchandise, must compute, at his peril, the duty required immediately, and potentially in the future, on his importations. He may be delayed in making his "entry" by accident or sickness. But again these possibilities do not change the business of Petitioner as a licensed customhouse broker.

It is thus too obvious to require demonstration, or even explanation, that the business of the customhouse broker expedites and speeds the flow of foreign commerce and promotes the safety of the revenue of the United States. Without these services these commerce throats would become choked from the continuous flow of foreign commerce and would seriously retard trade, if not kill it, between the two countries. It is equally self-evident that without the service of Petitioner, leaving each importer to make his own "entries," the free flow of foreign commerce would be seriously retarded and impeded, and the revenue of the United States subjected to actual and ruinous hazards, with disastrous results.

Consequently, Petitioner respectfully insists that it, whose business is that of a licensed customhouse broker, is an "appliance," an "agent," an "adjunct," an "instrumentality," a

device created by Congress and employed by the United States to keep the flow of foreign commerce moving efficiently, and to protect the revenue of the United States. Its business is a definite, inseparable part of the foreign commerce within the purview of Art. I, Sec. 8, clause 3.

The power of Congress over "commerce" includes all instrumentalities and every device that may be employed to promote trade between nations and protect the revenue of the United States.

Swift & Co. vs. United States, 196 U. S. 375, 40 L. ed. 518.

Stafford vs. Wallace, 258 U. S. 495, 66 L. ed. 735.

Lemke vs. Farmers' Grain Co., 258 U. S. 50, 66 L. ed. 458.

Petitioner is such an instrumentality or device employed in foreign commerce.

Where a corporation is engaged in interstate or foreign commerce it may enter and transact business in any state without state interference or restraint.

Pensacola Telegraph Co. vs. Western Union Telegraph Co., supra.

Crutcher vs. Kentucky, 141 U. S. 47, 57, 35 L. ed. 649, 652.

Sioux Remedy Co. vs. Cope, 235 U. S. 197, 59 L. ed. 193, 196.

The liability to pay taxes in the state where the business is done is not a controlling test by which to determine whether a business is interstate or intrastate. A state is without power to lay a tax which amounts to a burden on interstate and foreign commerce.

Panhandle Oil Co. vs. Mississippi, 277 U. S. 218, 72 L. ed. 857, 56 A. L. R. 583.

Yet unless the tax "is a direct obstruction to the exercise of Federal powers" over commerce, it may be levied on the property of natural persons or of corporations. In *Union P. R. Co. vs. Peniston*, 18 Wall. 5, 33, 36, 21 L. ed. 787, 792, 793, the Court said:

> "It may, therefore, be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the government merely because it is the property of such agent. . . . It is therefore manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. . . ."

(Quoted in *James vs. Dravo Contracting Co.*, 302 U. S. 134, 82 L. ed. 155, 169.)

The inhibitions of the Minnesota Foreign Corporation Act is a direct burden on commerce.

Deductions from "non-action" by Congress, and state legislation during that hiatus, under the police power of the states, affecting interstate commerce, are immaterial here because in the field of customhouse brokers and foreign commerce Congress has acted, and since Congress has acted its action is paramount, and exclusive.

The Gulf, Colorado & Santa Fe Railway Co. vs. Hefley & Lewis, 158 U. S. 96, 104, 39 L. ed. 910, 912.

Chicago, Rock Island & Pacific Railway Co. vs. Hardwick Farmers Elevator Co., 226 U. S. 426, 57 L. ed. 284.

We do not believe that the customhouse broker is an "independent contractor." He is a "person" able to render a specialized service furnished by the Government to those en-

gaged in foreign commerce to assist in executing the rules established for the regulation of foreign commerce, and to act as a medium for the collection of the public revenue.

The basic element denoting an independent contractor is the fact that the contractor has an independent business or occupation. An independent contractor "is one who, in exercising an independent employment, contracts to do certain work according to his own methods, and without being subject to the control of his employer, except as to the product or result of his work."

Par. 2. *Independent Contractors*, 27 *Am. Jur.*, p. 481, citing *Casement vs. Brown*, 148 U. S. 615, 37 L. ed. 582.

The customhouse broker may be said to have an independent occupation, but he may not run his business according to his own method nor without Government control. He has no contractual relation with the shipper or with whomsoever is the real author of his designation as customs broker on the bill of lading attached to the goods which arrive at the Port for clearance. His license, together with his designation as the broker on the bill of lading, create an implied contract under which he is empowered to demand and receive pay for his services for each entry he makes from either party to the importation; but the methods used in rendering that service are prescribed to the minutest detail by the Federal Government.

The Government presumably exercises care and discrimination in passing on, and in granting, the license applied for in accordance with Rules and Regulations prescribed by the Secretary of the Treasury, not by him or by the shippers or importers. While licensed he is invested with a lien on imported merchandise for duties paid by him and for his fees. He is, in the estimation of law, the owner of the goods which

arrive at the Port under the bill of lading which designates him as customhouse broker.

And, while licensed, the shipper or the importer, or both acting together, cannot "fire" him for cause or on notice. The only method available for dispensing with his services and to disengage him from his business is either to designate some other broker to enter the goods, or for the importer to go to the Port and clear his own importations, or to file charges against him with the Secretary of the Treasury for the revocation of his license (19 U. S. C. A., Sec. 1641). When such a proceeding is instituted the law gives the broker an appeal from an adverse decision to the United States Circuit Court of Appeals for the Circuit to which he belongs (19 U. S. C. A., Sec. 1641).

The licensed customhouse broker performs his services at the Port where he works when and while the Government receives goods moving in foreign commerce for the purpose of determining whether they are importable, and if importable, whether exempt from or subject to the payment of duty, and if the latter how much, provided the bill of lading names him as the broker for entry purposes.

The common carrier, engaged in foreign and interstate commerce, is temporarily "at rest" by force of law at the Port of Entry and the goods to be entered are thus temporarily interrupted in their journey solely for the purpose of satisfying the money demands made by the Government as the price for entering the United States. The "broker," governed by Rules of the Government, assembles the data, presents them to the Collector for appraisement of the goods on board cars and in the Collector's custody that the amount of the duty to be paid as a condition for the further progress of the goods in their appointed journey may be determined and paid. He then makes the records, and secures the release of the goods from the custody of the Collector. The

broker's business is a specialized service for which he is allowed to charge compensation; but that specialized service is furnished by the Government to those engaged in foreign commerce for the protection of the importers and the revenue of the United States. The right to render this specialized service is wholly within the control of the Secretary of the Treasury.

But even if the customhouse broker be an independent contractor the result is the same. For the nature of the act rather than the person of the actor is decisive.

Puget Sound Stevedoring Co. vs. Tax Commission, 82 L. ed. 68.

Therefore the argument in this case reduces itself into this formula:

1. The business of Petitioner is not only so intimately related to, but so connected with, foreign commerce that it is under the exclusive control of Congress irregardless of the fact that the conduct of its business is done in Minnesota and not in North Dakota.

2. The Minnesota Foreign Corporation Act subjects a North Dakota corporation to burdens which interfere with foreign commerce.

3. Therefore the decision of the Supreme Court of Minnesota, which sanctions and approves that effect of the inhibitions of the Minnesota Foreign Corporation Act on the business of Petitioner violates its constitutional rights. The decision of the Minnesota Supreme Court must accordingly be reversed and the judgment of the District Court be reinstated.

ARGUMENT

(Note: In the following argument Exhibit A means the "Rules and Regulations Relating to Customhouse Brokers" *and not the memorandum agreement* (R. 17) attached to the complaint. The stipulation of the parties defining the Record for this Appeal refers to the Rules and Regulations as Exhibit A. The most pertinent parts of the Rules and Regulations, Exhibit A, are found in Appendix II, *infra*.)

This is what we believe is called a case of first impression. The Supreme Court of Minnesota did not find a decision, nor did we, which directly deals with the present problem. A few cases deal indirectly with the functions of the office and business of customhouse brokers. In one case, *In re Landeck & Merrill*, 20 Fed. (2nd) 249, 250, the Court stated that a customhouse broker is the agent of the Treasury Department; but that statement was probably unnecessary to the adjudication of the issue actually involved in that case. In another case, *Duluth, S. S. & A. Ry. Co. vs. Wilson*, 167 N. W. 55, the Court found that the contract in controversy between the plaintiff and the defendant in that case involved the disposition of the fees arising from the employment. A third case, *People ex rel. Tower v. State Tax. Comm.*, 282 N. Y. 407, 26 N. E. (2nd) 955, involved the question of the customhouse broker's liability to pay a corporate franchise tax measured by net income. Still another case, *State vs. Wm. J. Oberle, Inc.*, 190 La. 1053, 183 So. 347, involved the question of the customhouse broker's liability to pay a state occupational tax. None of these cases, nor any other case found, deals directly with the present problem. Never before has the relation between the business of a customhouse broker and "commerce" between the United States and the Dominion of Canada, or any other foreign country, been directly involved.

There is no serious dispute, if any, about the material facts bearing upon the central issue in this cause.

The determination of the issue in the instant case rests primarily upon the construction of the sections of the Tariff Act, as amended, found in Appendix III, *infra*, and hereafter considered, and on the "Rules and Regulations" promulgated by the Secretary of the Treasury by virtue of those provisions of law applied to the broker's business activities (Exh. A).

The following facts are not disputed:

1. Petitioner was, during the time here in question, and for some years before, a North Dakota corporation (R. 124).

2. Continuously since March, 1928, Petitioner has been duly licensed by the Government of the United States as a customhouse broker pursuant to the provisions of law (R. 124, 1).

3. This license covers the Dakota District or United States Customs Collection District No. 34. This district embraces as its area Kittson County in Minnesota and the States of North and South Dakota. There are several Ports of Entry in this district, among which are the Ports of Portal, North Dakota, and Noyes, in Minnesota (R. 126).

4. By September 6, 1938, Norman G. Jensen, one of the Respondents, had been doing customhouse brokerage business as an individual for about a year. By that date he had acquired a few clients and a small business.

At that same time the two controlling stockholders and directors of the Petitioner, Mrs. Annie Kramer and Mrs. Nan W. Anderson, had lost their husbands, rendering them dependent on strangers for the operation of their customhouse brokerage business, run as a corporation, because they were not qualified to operate it themselves. The business of Petitioner had been and was prosperous (R. 126, Exh. B).

5. On September 6, 1938, Petitioner bought the business of Mr. Jensen for 25 fully paid up shares of Petitioner's authorized and issued capital stock, then actually worth more than $2,500.00, for a salary of $250.00 a month plus his necessary business expenses, and his proportionate part of the net earnings. The total outstanding stock was $10,000.00 (R. 127, 129, Exhs. B-1, B-2 and C).

In addition, this purchase and sale of his business called for Mr. Jensen's immediate election as director, president, treasurer and manager of Petitioner and its property.

Petitioner carried out its part of this bargain. Mr. Jensen immediately assumed the duties of the offices to which he was elected as a part of that bargain and took charge and control of Petitioner's property and business. All this was done on September 6, 1938. He was re-elected in 1939 (Exh. B).

6. The business bought from Mr. Jensen was like its own, a customhouse brokerage business. *He retained his insurance business and the brokerage business at Northgate* (Italics supplied). Petitioner's business has remained such ever since. No claim is made that Petitioner has been engaged in any business other than that of a customhouse broker.

7. On July 1, 1940, practically all of the customhouse brokerage business theretofore done at Portal, North Dakota, was transferred to Noyes, Minnesota, which also is in the district covered by Petitioner's license. This transfer occurred because the Canadian Pacific Railway on that date put into effect the routing of freight shipments forwarded by Petitioner's clients and others from Canada into the United States through the Port of Noyes, instead of through Portal (R. 130, 131).

8. When Mr. Jensen sold his customhouse brokerage busi-

ness to Petitioner on September 6, 1938, his license as customhouse broker became committed to the use by Petitioner for supporting and maintaining its license as a customhouse broker. Two officers of a corporation doing business as a customhouse broker must be individually licensed (R. 49, 50, Sec. 1 (c), Exh. A).

9. When the customhouse brokerage business became transferred to Noyes, Mr. Jensen was one of the individually licensed officers of Petitioner, and he was also one of Petitioner's directors, its president, treasurer and manager. Two days before this transfer of the brokerage business from Portal to Noyes in District 34 became effective, Mr. Jensen opened an office in Noyes to handle the transferred brokerage business at Noyes, beginning July 1, 1940. By that time he had trained Mr. Rime in clearing importations and he appointed him his agent on June 29, 1940. Mr. Jensen executed and filed with the customs the necessary power of attorney, authorizing Mr. Rime to act as his "agent" in "clearing" merchandise coming through Noyes from Canada. Mr. Jensen also directed, in writing, the chief clerk of the two railways, the Soo and the Great Northern, at Noyes, to deliver to Mr. Rime the invoices and bills of lading coming to Noyes to be cleared by Mr. Jensen or the Petitioner (Exh. Q, R. 132).

In addition, he furnished Mr. Rime with a stamp bearing Mr. Jensen's name, for use in conducting the brokerage business he thus started at Noyes, Minnesota, to handle the rerouted shipments of importations consigned to Petitioner for clearance. He found this stamp useful because it made the change look official. Jensen and his attorney in fact used this stamp to change the carrier's certificate on the bills of lading to read consigned to Norman G. Jensen instead of to the Petitioner. Thus the original consignment of the shipment was diverted from the Petitioner to the Re-

spondent by changing the original directions of the originating shipper. Bills of lading, consigning shipments of merchandise to Petitioner, delivered by the railway companies at Noyes to Mr. Jensen or his agent, Mr. Rime, were changed by them either at Noyes, Minnesota, or at Emerson, in Canada. Mr. Rime testified that he took these bills of lading back to the agent of the Canadian Pacific Railway at Emerson, in Canada, and there changed them by the use of the rubber stamp in the Emerson office (R. 132). When this change had been effected, Mr. Rime, as a rule, presented the altered papers to "customs" as true and genuine evidence of Mr. Jensen's right to clear the shipments which had been consigned at the point of origin to Petitioner for clearance.

In their greed and haste to take Petitioner's business, the Respondent wrongfully and maliciously circumvented the rule stated so clearly in *Harris vs. Dennie*, 28 U. S. 292, 7 L. ed. 683, 687, 688. The statute on the subject in force now is essentially the same as those found in the Revenue Collection Act of 1799, Ch. 128. Justice Story, speaking for the Court in that case, said:

> "From the moment of their arrival in port, the goods are, in legal contemplation, in the custody of the United States; and every proceeding which interferes with, or obstructs or controls that custody, is a virtual violation of the provisions of the act. . . .
>
> No person but the owner or consignee, or, in his absence or sickness, his agent or factor in his name, is entitled to enter the goods at the customhouse, or give bond for the duties or pay the duties (Secs. 36, 62). Upon the entry the original invoices are to be produced and sworn to, and the whole object of the act would be defeated by allowing a mere stranger to make the entry, or take the oath prescribed on the entry."

The Respondents were strangers to these goods when they arrived at the Ports of Exit and Entry under bills of lading

running to Petitioner, as consignee. Converting those bills of lading at either Port into carriers' certificates falsely naming Norman Jensen as the consignee was to defeat the Tariff Act and the rights of Petitioner by the alteration of instruments used for the conduct of foreign commerce.

A few extracts from the testimony in the Record will illustrate and support these statements.

Mr. Jensen testified:

"Q. The usual and the regular and the legal way for handling merchandise shipped into the United States is this, is it not, the shipper in Canada attaches to the car an instrument called the waybill, and in addition, attaches bills of lading, which designate the broker in the United States who they entrust with the handling of that shipment, isn't that right?

A. They do that.

Q. And that bill of lading consigns the shipment to the customs broker at the Port of Entry?

A. That's right" (R. 50).

Mr. Rime testified:

"Q. Whatever there were (bills of lading, etc., consigning shipments to Petitioner) were taken over (to Emerson, Canada) by you or Mr. Jensen, isn't that right?

A. Yes.

Q. And you understood and admit now that you were able to do that because of that paper (Exh. Q) that Mr. Jensen had left with the chief clerk on the 29th of June, 1940?

A. I know that now, yes. - - -" (R. 97).

"Q. And those shipments or the evidences of such broker's consignments were taken over to the C. P. R. by you or by Mr. Jensen, isn't that right, through (to) the Canadian side?

A. That's right.

Q. And there you prevailed or secured the prevailed upon the officials of the C. P. R. or secured their consent to have the certificates changed on those bills of lading so that you could make entry?

A. – – – Oh, yes, I did.

Q. Yes,—and you understood all the time that without such change you couldn't under your power of attorney or Mr. Jensen couldn't use—couldn't under his license broker those shipments?

A. That's right. – – –

Q. Why did you resort to that practice?

A. Because they refused to allow me to make entry at the customhouse.

Q. That is, the customs officials refused to let you act as broker on the shipments consigned to the Union Brokerage Company?

A. Yes.

Q. And so to avoid that regulation, you did, and Mr. Jensen did what you have just described?

A. Yes" (R. 98).

Mr. Rime delivered the stamp gotten from Mr. Jensen to the official at Emerson. That stamp had the name of Norman G. Jensen on it (R. 98, 99).

That practice has prevailed since July 1, 1940. The bill of lading consigning the merchandise to Union Brokerage Company had to be changed in order that entry might be made in the name of Norman G. Jensen (Exh. KKK, R. 120).

During these developments, and until he was asked to resign, Mr. Jensen, as stated, held the offices mentioned, and drew his pay from Petitioner. He admitted that he "received a monthly salary from the Union Brokerage Company" (R. 56, 66).

"The number of papers was so considerable coming in that manner that in the interest of time saving" the stamp was used to put Jensen's name on them and that this was done under Mr. Jensen's directions (R. 102, 103).

Where Mr. Jensen was required by the law and Regulations, as well as by the plainest principles governing a fiduciary, to act the part of a man of integrity, he resorted to "cunning and craft," using bills of lading, carriers' certifi-

cates, invoices and waybills—all instruments of foreign commerce—to defeat the interests entrusted to him by the Petitioner and to divert that foreign commerce into his own "lap" for his own profit at the expense of his principal, while his associate directors were known to trust him. The instruments designed by Congress to evidence honest business intercourse between the two nations were perverted into instruments of fraud.

The number of shipments cleared between July 1, 1940, and November 30, 1941, was in the neighborhood of 19,000 (Exh. EEE, R. 81).

This transfer or conversion of Petitioner's business was artfully concealed from Petitioner for about three months (R. 133).

10. On November 5, 1940, Mr. Jensen's faithless conduct had been discovered, and he was requested to resign from the offices he held. He did.

11. In 1941 Petitioner brought the suit out of which this cause has arisen.

12. The customhouse broker's business is the creature of the laws of Congress. The right of an individual, association or corporation to engage in that business wholly depends on the issuance of the license authorizing him, them or it to engage in that business. The right to issue the license is committed by Congress to the Department of the Treasury. That license, when once granted, may be revoked by the same authority, and, if revoked, the right to engage in that business ceases (Secs. 10, 11, Exh. A).

The conduct and operations of a broker's business are likewise prescribed, regulated and controlled by the Treasury Department in accordance with Acts of Congress. The profits derived by a broker from the business wholly depends on the importations consigned to and received by him

for clearance. Foreign commerce is the only source and fountain of the broker's business, and the Tariff Act of the United States, together with the Rules and Regulations of the Treasury, adopted to foster trade with foreign nations and to protect the revenue of the United States, measure, direct and control the activities of the customhouse broker in the conduct of his licensed business. He cannot go beyond or below these rules, for if he exercises any powers of discretion or fails to observe accurately, the Government rules he does so at his peril. These claims are amply supported by the evidence.

Exhibit A, which is the compilation of the Rules and Regulations Relating to Customhouse Brokers, was offered and received in evidence (Original R. 56). Its material provisions are found at pages 5-9, both inclusive, Appendix II, *infra*. Sec. 1 thereof recites that

> "except as provided in subdivision (c) of this section, no person shall transact business as a customhouse broker without a license granted in accordance with the provisions of this subdivision."

except that importers may clear their own importations without a license.

Sec. 1 (b) prohibits the Treasury Department from doing business with a person conducting a customhouse broker business without a license.

Whoever desires to engage in the business of a customhouse broker must "submit an application to the Committee," under oath, for a license, "stating his qualifications" therefor. The form of the application is prescribed by the Committee on Practice, and approved by the Secretary of the Treasury. Before such an application is granted the Committee on Practice of the Treasury Department investigates the applicant "and to this end may utilize any investigative facility of the Treasury Department." Factors to be taken into account in granting the application for the license

"shall cover, but need not be limited to (1) the correctness of the statements made in the application, (2) the business integrity of the applicant, and (3) when the applicant is an individual (including an officer of a corporation or association or a member of a partnership), the character and reputation of the applicant and his experience in customs matters" (Sec. 3 (b), Exh. A).

When and if the application for the license is granted the name and address of the applicant

"shall be posted conspicuously in the customhouse at the port where the applicant proposes to maintain his principal office. In the case of a corporation . . . the name of the licensed officers or members shall be stated" (Sec. 3 (c), Exh. A).

Sec. 3 (d), Exhibit A, recites the "causes sufficient to justify rejection of an application."

Sec. 5, Exhibit A, further provides that

"a licensed customhouse broker requires no further enrollment under these regulations for the transacting within the customs districts in which he is licensed, *of any business relating specifically to the importation or exportation of merchandise under customs or internal revenue laws*" (Italics supplied). He is also entitled, without further license or enrollment, to represent claimants or other persons before the Treasury Department in Washington in any matter in which he acted as a customhouse broker in any district in which he is licensed."

The Supreme Court of Minnesota overlooked this last provision of the "Rules" because it was led into making this erroneous statement:

"He (the customhouse broker) cannot represent a claimant before the treasury department unless enrolled as attorney or agent in conformity with the requirements of the department" (R. 153).

The Rules are to the contrary.

Sec. 7, Exhibit A, defines the conditions where a license is not required for the clearance of merchandise.

Sec. 8, Exhibit A, relates to the books and papers which the licensed customhouse broker must keep and maintain. Thus he

> "shall maintain correctly and in orderly itemized manner, and keep current, records of account of all financial transactions as a customhouse broker"

and

> "keep and maintain on file a copy of each entry made by him, and copies of all his correspondence and other papers *relating to his customs business*" (Italics supplied) (Sec. 8 (b), Exh. A).

Sec. 8 (c), (d), (e) and (f), Exhibit A, define the form of the records to be kept, and the form of authorized substitutes.

Sec. 8 (g), Exhibit A, requires the customhouse broker to keep the books and papers relating to his business "for at least five years," and to maintain them "in such manner that they may be readily examined. Any or all of such books and papers shall be made available to duly accredited agents of the United States on demand therefor within five years after their preparation or receipt by the broker. The broker shall furnish such additional information regarding his activities as a licensed customhouse broker as such agents may require."

The examination of the books and papers is required to

> "determine whether or not the broker is complying with the requirements of this section. Furthermore, the supervising customs agent or any duly accredited agent of the United States designated by him may at any time, *for the purpose of protecting importers or the revenue of the United States*, inspect such books and papers to obtain information regarding specific customs transactions" (Italics supplied) (Sec. 8, (h), Exh. A).

Additional duties and obligations may be imposed on the licensed customhouse broker by the Secretary of the Treasury (Sec. 9 (a), Exh. A).

Subdivisions (c), (d), (e), (f), (g), (h), (i), (l), (n), (o), (p), (r), (s) and (t), Sec. 9, Exhibit A, state the prohibitions relating to the conduct of his business by the licensed customhouse broker.

Subdivision (j) of Sec. 9 commands the licensed customhouse broker to "advise his client promptly" of any error or non-compliance chargeable against him; and subdivision (k) commands the broker to use due diligence in ascertaining and imparting information to his clients with reference to any customs business; and subdivision (m) of Sec. 9, Exhibit A, provides:

> "Each licensed customhouse broker shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable *in respect of the client's customs business*" (Italics supplied).

The license of a customhouse broker may be revoked, and the law, Rules and Regulations governing such revocation are declared in Sec. 10, Exhibit A. If revoked his right to do business ends.

We believe that this Court takes judicial notice of Rules and Regulations made and approved by the Interstate Commerce Commission governing the transportation of freight traffic. On this assumption we call attention to Supplement No. 36 to G. N. Ry., I. C. C. No. A-7862, which provides that

> "carriers parties to this tariff will, on request, advance accrued charges incidental to the transportation of freight tendered for shipment, as follows:
>
> . . .
>
> Customs fees and brokerage fees on import and bond-

ed freight, duty charges at the Canadian boundary. . . . (p. 7, G. N. Ry., G. F. O. No. 440-M).

The superseded Rules and Regulations have carried the same concessions at least since 1939.

I. C. C. No. 6964, pertaining to the operation of the Soo by the trustees of that system, on page 4, provides:

"Agents are also authorized to advance charges on the following:

. . .

Customs fees and brokerage fees on import and bonded freight. Duty charges at the Canadian boundary. . . ."

The here material parts of Title 19, U. S. C. A., relating to Customs Duties, are found in Appendix III, *infra*.

Sec. 1 confirms the reorganized customs service set up on March 3, 1913, as the permanent organization.

Sec. 2 authorizes the president to rearrange the several customs collection districts, provided the number shall not exceed 48, without Congressional authority. No rearrangement has been made affecting the Dakota District which is but another name for United States Customs Collection District 34.

Sec. 197 is the law governing the kind of money in which duties upon imports may be paid. This section embodies the duty imposed on the customhouse broker by Sec. 9 (m), Exhibit A.

The significance and practical value of this and other provisions of the Tariff Act are appreciated when it is recalled that "duties due on goods imported constitute a personal debt due the United States from the importer, although there exists a lien on the goods and a bond for the payment of the duties."

Meredith vs. United States, 38 U. S. 486, 10 L. ed. 258.

The broker, taking the place of the importer, and furnishing a bond in the amount and containing the conditions prescribed by the Secretary of the Treasury, makes the United States practically immune against loss which otherwise would be suffered, and at the same time hastens the release of the merchandise from the custody of the Collector for the benefit of the United States.

Sec. 232 defines the word "port" as "any place . . . at which merchandise can be imported."

Sec. 1481 deals with the subject of invoices, their contents, in the case of merchandise to be imported into the United States, and what must be shown, "to a proper appraisement, examination, and classification, of the merchandise that the Secretary of the Treasury may require."

The entries which the Rules and Regulations require the licensed broker to make, file and keep must disclose the facts so required to appear on the invoices of the merchandise consigned to him for clearance.

The conclusive interest of the United States in the business of the broker is shown by the facts (1) that he deals only in matters of foreign commerce, and (2) that Congress has covered this subject by "penal provisions concerning false invoices, entries, etc.," found in Secs. 1591, 1592 and 1593 (a) of Title 19, and Sec. 126 of Title 18, U. S. C. A.

Sec. 1482 deals with certified invoices and certification in general, all relating to goods moving in foreign commerce.

(Sec. 338, Title 19, U. S. C. A., requires a declaration to the consul as to the Port in the United States at which the merchandise is to be "entered." This adds force to the fact that the goods entered by the broker are recognized from the inception of their journey to be moving in foreign commerce.)

Sec. 1483 declares that

"all merchandise *imported* into the United States shall be held to be the property of the person to whom the same is consigned; . . .; and

A person making entry of merchandise under the provisions of subdivision (h) or (i) of Sec. 1484 (which relates to entry on carrier's certificate and on duplicate bill of lading respectively) shall be deemed the sole consignee thereof" (Italics supplied).

So, when the Respondents removed the bills of lading representing merchandise consigned by exporters in Canada to Petitioner for importation into the United States and substituted for them carriers' certificates, they were able to produce what, on their face, appeared to be genuine title papers authorizing them to clear those shipments which had been originally consigned to Petitioner, so long as that change and alteration was effected out of sight of the Collector and his agents at the Port of Entry.

The object of this section is to prevent frauds on the Government "arising from collusive transfers."

Lafontan vs. Elting, 54 Fed. (2nd) 664, reversed on other grounds.

The consignee is treated as the owner and importer.

Meredith vs. United States, supra.

The broker, on making the sworn declaration for entry of the goods, in which he declares himself the consignee, becomes chargeable with additional duties (see Exh. DDD).

Sec. 1484 deals with the entry of merchandise imported, and requires that "the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe." That is, Petitioner, if the consignee in a bill of lading attached to merchandise shipped from Canada, destined for the United

States, or its designated agent, in such case "shall make the entry."

This entry "shall be made at the customhouse" as a rule.

But "no merchandise shall be admitted to entry" ". . . without the production of a certified invoice therefor," subject to certain exceptions.

"The consignee shall produce the bill of lading when making the entry" subject to stated exceptions. If "no bill of lading has been issued" the Collector is authorized to accept other evidence; and a bond may be required for the production of the bill of lading later.

> The "entry shall be signed by the consignee, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement and liquidation, and shall be accompanied by such invoices, bills of lading, certificates and documents as are required by law and regulations promulgated thereunder."

Sec. 1484 also by subdivision (h) defines when and how a carrier's certificate may be used in lieu of a bill of lading; and subdivision (i) of that same section prescribes the conditions under which duplicate bills of lading may be used for making entry.

Sec. 1485 deals with the declaration and the form and contents thereof "to be prescribed by the Secretary of the Treasury."

Subsection (4) states the liability of the consignee for increased duties. He escapes liability for "any additional or increased duties if" he meets the three conditions there stated. These conditions are cumulative and not separable, so that compliance with one of the three conditions does not have the effect of relieving him of the additional duties which may be assessed after the estimated duties have been paid. Particular attention is called to the third condition, namely,

the condition that if the ultimate consignee or owner of the importation, declares within 90 days that "he will pay all additional and increased duties" the broker becomes released if the other two conditions have been satisfied. Emphasis is also placed on the last sentence which is that "such owner shall possess all the rights of a consignee" or broker. If these three conditions are not satisfied by the broker he must pay or forfeit heavy penalties as provided by law arising on account of the importation, through foreign commerce, of goods into the United States.

Sec. 1490 deals with "incomplete" entries and authorizes the taking of the merchandise arriving at the Port into custody "to be held at the risk and expense of the consignee. . . ."

Sec. 1489 (omitted from Appendix III), Title 19, U. S. C. A., regulates the determination of "additional duties" where the appraised value exceeds "the entered value." In cases of this kind the consquences may be severe, and good faith is usually no defense. The broker is liable for these unless the conditions mentioned are used to relieve him of liability.

An entry is not complete until payment is made of the estimated duties.

Sec. 1505 provides that at the time of making the entry the "consignee," who is, as a rule, the broker, shall pay "the amount of duty estimated to be payable thereon." This "estimated duty" is computed by the broker, subject to correction as provided in that section, and if additional duty is claimed by the Collector, the consignee, whether he be the broker or the actual owner, must pay the additional duty demanded, and, where more than enough has been deposited, receive back the excess duties deposited for the estimated duty. In the latter case, he must refund the excess to his client. In the former he has the right to demand reimburse-

ment from his clients.

Sec. 1513 provides immunity for the Collector and other customs officers "to any owner, importer, consignee or agent, or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon. . . ."

Sec. 1641 gives authority to the Secretary of the Treasury to prescribe rules for the licensing of customhouse brokers, and for the revocation of licenses granted to brokers. It is to be observed that this section of the law specifically provides that

> "the Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations . . . *and may require as a condition to the granting of any license, the showing of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters*" (Italics supplied).

Acting on this authority of law, the Treasury Department compiled and issued the Rules and Regulations Relating to Customhouse Brokers, Exhibit A, Appendix II, *infra*. These Rules and Regulations are designed to protect commerce against dishonest, incompetent and crafty customhouse brokers; to protect the revenue of the United States and to empower the officials, charged with the duty of protecting both the commerce and the public revenue, to remove the faithless and incompetent brokers from contact with the flow of "commerce."

The underlying theory of all these provisions is stated in Par. 97, "Customs Duties," 25 C. J. S., p. 254, in this language:

> "In order to prevent frauds on the revenue through collusive transfers, and to save the government the trouble and inconvenience of hunting up the ultimate

consignee, it has from the earliest acts been provided that an importation shall, for the purposes of the tariff acts, be deemed and held to be the property of the person to whom the same is consigned, unless the consignment is unauthorized, even though the holder is but a customs broker or a forwarder."

As customhouse broker, Petitioner was and is licensed by the Federal Government only to aid in matters of foreign trade, commerce, and navigation for the protection of the revenue of the United States and for the welfare of the importers.

Is This Business Foreign and Interstate Commerce?

Reduced to its lowest denominator the present problem is this: Is the customhouse brokerage business, carried on and conducted under compulsion of these Acts of Congress and the Rules and Regulations of the Treasury Department, regulating and controlling the nation's foreign commerce, local and intrastate commerce? or is it foreign and interstate commerce?

Notwithstanding the close, and also exclusive, relationship of Petitioner's business duties and activities to the commerce between the Dominion of Canada and the United States, the Supreme Court of Minnesota said:

". . . The ultimate question in the instant case then is: Did the customhouse brokerage business conducted by plaintiff *in a substantial way interfere with or obstruct the exercise of the granted power of Congress to regulate interstate commerce*" (R. 152).

"In applying this principle, so recently enunciated by the Supreme Court of the United States to the facts here presented it is necessary to consider the character of the business in which plaintiff was engaged. Customhouse brokers are not public officers but perform purely personal services as agents of the shippers. . . .

". . . It (the Petitioner) had nothing whatever to

do with the actual importation or exportation of articles of commerce . . . . They receive no fees or emoluments from the federal government. . . . We think this quite far removed from being an agent of the United States, or being engaged in a governmental function. . . . He does not come into contact with the commerce itself in any way insofar as its actual movement is concerned. . . . We fail to see how such a broker is an instrumentality of the commerce. Therefore, it seems to us that the statutory requirement (obtaining a certificate of authority to do business in Minnesota before suing in her courts) is not an obstruction or interference with interstate commerce. . . .

"The commission men in the Wallace case (*Stafford vs. Wallace*, 258 U. S. 495, 66 L. ed. 735) had actual contact with the movement of the commerce itself, and it was clearly a matter of interstate concern affecting all of the states alike. *In the instant case, the matter of public policy or public concern is not involved.* (Italics supplied.) . . . We therefore feel that the Wallace case is not in point here" (R. 152-154).

The District Court of Minnesota, on the other hand, found from the evidence in the case this fact:

"5.

That the principal function of customhouse brokers, as far as herein concerned, is that of making entry of shipments of goods entering the United States from the Dominion of Canada, paying the customs duty imposed on such shipments, and clearing the same so that they may continue on their course to their ultimate destination with the least possible loss of time; that in making entry shipments are consigned on bills of lading by the shipper to the customhouse broker chosen by such shipper; that a copy of such bill of lading is thereafter delivered to the broker by the carrier or mailed directly to him by the shipper; that upon receipt of such bill of lading by the broker the same is presented to the collector of customs and thereupon the duty due the United States is determined by the collector of customs and paid by the broker, whereupon the shipment is cleared and permitted to proceed to its ultimate destination and

consignee; that the customhouse broker, so acting, is considered, for the purpose of making such entry, the actual consignee, and acts as the agent of the shipper in making such entry; that in clearing said shipments he aids in the collection of customs duties and facilitates the free flow of commerce between a foreign country and the United States; that the customhouse brokers, involved herein, are established as federal instrumentalities and are engaged in interstate commerce in facilitating the free flow of commerce between the United States and the Dominion of Canada" (R. 125).

Consider now some indisputable facts in the case and some of the settled principles of law.

These regulations of the Treasury Department, and acts of Congress, are undeniably regulations of commerce. The power of Congress to regulate foreign and interstate commerce is not confined to movements of goods and persons across state and national boundary lines. That power extends to whatever action becomes necessary to free and keep free from obstruction the lawful passage of commodities from state to state and between this and foreign nations.

The title to the goods, cleared by Petitioner as a customhouse broker, is invested in it, as a rule, when the common carrier accepts those goods in Canada for transportation to the importer in the United States. That title is granted subject to the rights of the United States to take the goods into custody when they reach the Port of Entry in order that the duty to be paid as a condition for their importation into the United States may be determined; computed and paid. On presenting to Customs satisfactory evidence that Petitioner, or its duly authorized agent, is possessed of that "title"—and that title is evidenced by the bill of lading, certified invoice, waybill, etc.—it may "enter" the goods, procure their appraisement where that is deemed necessary, pay the estimated duty, give consent to the payment of any additional

or increased duty, secure the inspection of the shipment of the goods, and secure their release from the custody of the United States so that the common carrier may proceed on its journey, thus interrupted at the border, to the designated destination. During all this time, and in any event up to the time the common carrier resumes the journey with the goods, Petitioner is the "owner" because it is the consignee of the goods in question. Either while in the Port, or, as is usual, during the next 48 hours—no longer—Petitioner has to make the report on forms prescribed by the Government for the regulation of "commerce" and for the levy of duties on the goods "entered" so that five or more years thereafter, and at any time in the interim, the Government may on the one hand recover the true duty where a mistake has been made in estimating the duty and on the other hand, check at any time the transactions of the broker for the purpose of supervising and controlling his dealings with his clients under his license for the protection of importers.

This in brief is the breadth and length of Petitioner's business, as it also is the extent of the business done by all other licensed customhouse brokers in the United States. That is, Petitioner is engaged exclusively in the business of handling goods which are a part of the "flow" of foreign commerce, and, through this its handling of goods moving in foreign commerce, the revenue of the United States is protected and the trade between the Dominion of Canada and the United States is fostered, accelerated, and freed from obstructions and embarrassing delay which would cripple the trackage and wharfage facilities of every Port beyond the possibility of comprehension. The Petitioner, as customhouse broker, due to the discriminating care intended to be exercised by the Government in the granting of licenses, is a member of a class which is able and permitted to render "specialized service," clearly and definitely identified with

foreign commerce.

Can anything be more a matter of public concern or policy than the revenue of the United States and the orderly flow of trade between the United States and a foreign country at peace with one another? The revenue sustains the life of our country, and orderly trade between our country and foreign nations is, to say the least, a substantial source of that life-sustaining revenue.

The fact that customhouse brokers "are not public officers" is wholly immaterial. The conductor, the engineer and the brakeman of the train carrying the goods consigned to Petitioner for clearance are not any of them public officers as here used; but, because they run the train which carries these and other goods from Canada into the United States they are engaged in foreign commerce. Nor is it of any significance that Petitioner's office was situated in Noyes, Minnesota, or that its records were kept there. The Government's records are also at Noyes, and the trains carrying the goods consigned to Petitioner for clearance stop at Noyes that Petitioner may do its work for the benefit of both Government and importers. Noyes is the location of the Port of Entry where Petitioner is listed according to law as one of the customhouse brokers, and where the goods moving in foreign commerce are stopped to remain there until Petitioner has rendered its specialized service according to the provisions of the Tariff Act and the Rules and Regulations of the Treasury Department. The Petitioner, then, is the "means" used to insure the payment of the duty and to dissolve the stoppage of foreign commerce at the Port and to enable the goods so stopped to resume their foreign commerce journey on board car of the common carrier transporting them from the Dominion of Canada into the United States under through bills of lading.

The nature of the act, that is, the service rendered and its

relation to commerce, rather than the person of the actor or his position or location, is decisive, for

> "'Commerce' in its broadest acceptation embraces not merely traffic but the *means* and vehicles by which it is prosecuted" (Italics supplied).
>
> *Chicago & N. W. Ry. Co. vs. Fuller*, 84 U. S. 560, 21 L. ed. 710, 714.
>
> *Puget Sound Stevedoring Co. vs. Tax Commission of the State of Washington, supra.*
>
> *Southern Ry. Co. vs. Greenboro Ice & Coal Co.*, 202 U. S. 543, 50 L. ed. 1142, 1148.
>
> *Dahnke-Walker Milling Co. vs. Bondurant*, 257 U. S. 282, 66 L. ed. 239, 243, 244.

The case of *Rock Island Plow Co. vs. Peterson*, 93 Minn. 356, 101 N. W. 616, presents a fact situation not out of harmony with the fact situation of this case. There plaintiff was a foreign or Illinois corporation "engaged in the business of manufacturing and selling agricultural implements." Defendant resided and did business in Red Wing, Minnesota, as a retail dealer in implements. Plaintiff's traveling salesman received from that defendant an order for merchandise, and the order given is set out at page 357 of the reported opinion. The goods were shipped by the plaintiff and accepted by the defendant. A contract had by that time been made and entered into between plaintiff and a warehouse company for receiving and storing goods shipped to it by the plaintiff, and under the storage agreement the warehouse company agreed "to transfer and reship goods promptly upon receipt of written orders from plaintiff. . . ." The goods ordered by the defendant were shipped to the warehouse and from there reshipped to the defendant at Red Wing. Thereafter as a part of a settlement between plaintiff and defendant the former received the note sued on. The defense was that plaintiff was a foreign corporation and that it had not complied with the "Somerville Law" which

is now known as the Minnesota Foreign Corporation Act, in that it had not obtained a Certificate of Authority to do business in Minnesota. The lower court in that case sustained that defense. The appeal followed.

On this fact situation the Supreme Court of Minnesota held among other things that "no presumptions are to be indulged in against plaintiff. The burden was upon defendants to show affirmatively a violation of the statute," and that the plaintiff in that case, having its place of business in Rock Island, Illinois, and all its books and records there, was engaged in interstate commerce, for which reason the Act did not apply.

"Commerce with foreign nations" comprehends every species of commercial intercourse.

Board of Trustees of University of Illinois vs. United States, 289 U. S. 48; 77 L. ed. 1025, 1028.

Even if Petitioner were engaged in intrastate business, its business is used in foreign commerce operations; and in such cases the intrastate business falls under the protective powers of Congress.

Houston, E. & W. Texas Ry. Co. vs. United States, supra.

Baltimore & O. R. Co. vs. Maryland, 88 U. S. 456, 22 L. ed. 678, 684.

The business here involved is national in character and stems from the administration of the Tariff Act of the United States, which requires a uniform plan of regulation. Congress, by the means exhibited, has provided both, and interference therewith by the State is prohibited.

Welton vs. State of Missouri, 91 U. S. 275, 23 L. ed. 347, 348, 349, 350.

Clark vs. Pigeon River Improvement Slide & Boom Co., 52 Fed. (2nd) 550.

Commerce includes not only the sale and exchange of goods, but comprehends all the initiatory and intervening acts and instrumentalities that bring about the sale or exchange of goods, and in determining the nature of a business as to whether it is intrastate or interstate courts look to practical considerations and the established course of business.

Foster-Fountain Packing Co. vs. Haydel, 278 U. S. 1, 73 L. ed. 147, 153.

Johnson vs. Haydel, 278 U. S. 16, 73 L. ed. 155.

Thus, it has been held that the tracks, bridges, roadbed and equipment of a carrier in actual use in interstate commerce have a definite interstate character, protecting the employees while at work thereon.

Industrial Accident Commission of State of California vs. Payne, 259 U. S. 182, 66 L. ed. 888, 890, 891.

Baltimore & O. S. W. R. Co. vs. Burton, 263 U. S. 540, 68 L. ed. 433, 436.

Louisville & N. R. Co. vs. Parker, 242 U. S. 13, 61 L. ed. 119, 120.

The articles handled by Petitioner as customhouse broker are importable goods, moving in foreign commerce. They are moving in that foreign commerce while Petitioner handles them, and they remain protected by the commerce clause of the Constitution until the actual importer commingles the imported merchandise with the property of the state of his residence.

Thurlow vs. Commonwealth of Mass., 46 U. S. 504, 12 L. ed. 256, 288.

Southern Ry. Co. vs. Greenboro Ice & Coal Co., supra.

U. S. vs. Sheffield Farms Co., 43 Fed. Supp. 1.

Petitioner has not claimed, and the District Court of Minnesota did not hold, that Petitioner was or is a "Govern-

ment official" or Government agent, like an Indian agent or the Collector of Customs or the Collector of Internal Revenue. The Petitioner has claimed, and the District Court of Minnesota held, that Petitioner is an adjunct, an instrumentality used and employed by importers and exporters and the United States to protect the importers and the revenue of the United States.

It is unnecessary to prolong the discussion. It seems to us to be "too plain to require discussion that" Petitioner is engaged in foreign commerce.

We therefore respectfully maintain that Petitioner is engaged in "foreign commerce," and that it is therefore protected from oppressive State laws and restrictions. It was entitled to sue in Minnesota without a Certificate of Authority.

2. The Minnesota Foreign Corporation Act Directly Obstructs and Interferes With Commerce and Cannot Be Used to Prevent the Petitioner From Maintaining Its Suit in That State.

The pertinent sections of the Minnesota Foreign Corporation Act (Ch. 200, Laws of Minnesota, 1935) are printed as Appendix I and are Secs. 2, 5, 6, 9, 10, 20, 21, with their respective subdivisions. This law provides, as will be seen, that:

> "No foreign corporation transacting business in this state (Minnesota) without a certificate of authority shall be permitted to maintain an action in any court in this state until such corporation shall have obtained a certificate of authority."

This statute further provides that:

> "No foreign corporation shall transact business in this state unless it holds a certificate of authority so to do."

To get such a Certificate of Authority $50.00 must be paid with the application as an initial filing fee.

If a foreign corporation does transact business in Minnesota without a Certificate of Authority this law subjects it to a penalty of not exceeding $1,000.00 and an additional penalty of not more than $100.00 "for each month or fraction thereof during which it shall continue to transact business in this state without a Certificate of Authority thereafter." This is a very serious burden.

There are a great many other burdensome provisions in this statute affecting the business done by a foreign corporation in Minnesota.

The present Minnesota Foreign Corporation Act is, in substance, Sec. 7493, *Mason's Minnesota Statutes, 1927,* which was originally adopted by the Legislature of Minnesota as the Somerville Law," Ch. 69, Laws of Minnesota, 1899. The force and application of this law on foreign corporations engaged in interstate business was decided by the Supreme Court of Minnesota nearly 40 years ago.

In the case of *Rock Island Plow Company vs. Peterson, supra,* decided in 1904, the Supreme Court of Minnesota held that this law did not apply to a foreign corporation engaged in interstate commerce. The Court there said:

> "This statute was not intended to interfere with interstate commerce, for it is beyond the power of the legislature to enact laws prohibiting or restricting parties engaged in that sort of business, but was intended to apply exclusively to foreign corporations doing business within our borders, as distinguished from interstate commerce."

The rule recognized and established in that early case has been followed by the Minnesota Supreme Court in several later cases. Among them are:

Victor Talking Machine Co. vs. Lucker, 128 Minn. 171, 150 N. W. 790.

Thomas Mfg. Co. vs. Knapp, 101 Minn. 432, 112 N. W. 989.

Defender Auto-Lock Co. vs. Schmelzel Co., 157 Minn. 285, 196 N. W. 263.

The present Supreme Court of Minnesota recognizes these former holdings because the Court says:

> "Statutes similar to the one here invoked (Minnesota Foreign Corporation Act) by defendants have usually been held to place an undue burden on interstate commerce and hence to be unconstitutional as to foreign corporations engaged in interstate business.
>
> *Davis vs. Farmers Co-op. Equity Co.*, 262 U. S. 312.
>
> *Sioux Remedy Co. vs. Cope*, 235 U. S. 197 (R. 149 (734))."

Consequently, we say that the Minnesota Foreign Corporation Act was not intended, and cannot be construed, to exclude foreign corporations from the State of Minnesota, or exact conditions for allowing them to sue in the courts of the State where they are engaged in interstate commerce. Petitioner's general and usual course of business was and is interstate or foreign commerce within the purview and protection of clause 3, Sec. 8, Art. I of the Constitution of the United States. The District Court of Minnesota appreciated and recognized this principle of law (see Finding 5, *supra*, and R. 125).

That finding of the District Court is a crystal clear statement of facts. It states the sum total of the facts of Petitioner's business. There is no escape from this judicial finding of fact. It represents the essence of all of the testimony and of all other evidence.

Accordingly, Petitioner had the absolute right to bring this suit in the state court where it was tried without complying with the provisions of the Minnesota Foreign Corpo-

ration Act. A long line of decisions could be cited to support this claim, but the following citations will suffice:

Hooper vs. California, 155 U. S. 652, 39 L. ed. 207.

Western Union Telegraph Co. vs. Texas, 105 U. S. 460, 26 L. ed. 1067.

Western Union Telegraph Co. vs. Kansas, 216 U. S. 1, 54 L. ed. 355.

McCall vs. California, 136 U. S. 104, 34 L. ed. 391.

Robbins vs. Shelby Co. Taxing Dist., 120 U. S. 489, 30 L. ed. 694.

Crutcher vs. Commonwealth of Kentucky, 141 U. S. 47, 35 L. ed. 649.

Texas Transport & Terminal Co. vs. New Orleans, 264 U. S. 160, 68 L. ed. 611.

Puget Sound Stevedoring Co. vs. Tax Commission, *supra*.

Dahnke-Walker Mill. Co. vs. Bondurant, *supra*.

Looney vs. Crane Co., 245 U. S. 178, 62 L. ed. 230.

Sioux Remedy Co. vs. Cope, *supra*.

Lawder vs. Stone, 187 U. S. 281, 47 L. ed. 178.

DeLima vs. Bidwell, 182 U. S. 1, 45 L. ed. 1041.

Harriot vs. Brune, 9 How. 619, 13 L. ed. 282.

So. Covington & Co. St. Ry. Co. vs. Covington, 235 U. S. 537, 59 L. ed. 350.

Stafford vs. Wallace, *supra*.

Swift & Co. vs. U. S., *supra*.

Leicy vs. Hardin, 135 U. S. 100, 119, 34 L. ed. 128, 136.

Brown vs. Maryland, 12 Wheat. 419, 6 L. ed. 678, 688.

State of Missouri vs. Kansas Natural Gas Co., 282 Fed. 341, 345.

First vs. Brewster, 282 U. S. 493, 75 L. ed. 478, 481.

Board of Trustees of University of Illinois vs. U. S., *supra*.

The license granted to Petitioner by the Government covers the county in Minnesota where this action was brought and tried to judgment. That county is a part of the district which is covered by the license. The business authorized to be carried on under that license, and it is the only business engaged in by Petitioner, is a part of our foreign commerce.

The decision of the Supreme Court of Minnesota denied the life of the license as to that county by holding that Petitioner cannot sue in that county without a Certificate of Authority pursuant to the provisions of the Minnesota Foreign Corporation Act.

Petitioner respectfully contends that the license granted by the Government supersedes the Minnesota Act, and that, on this ground, as well as on the grounds discussed, the Minnesota Supreme Court committed reversible error in holding that Petitioner cannot sue in that State without a Certificate of Authority. Its license as a customhouse broker is supreme and the Foreign Corporation Act must yield, that its benefit may be fully realized.

CONCLUSION

Petitioner withdraws its claim that the decision of the Supreme Court of Minnesota in this case offends against Art. IV of the Constitution because it is a corporation.

The Federal Government creates and controls Petitioner's business as a customhouse broker for the protection of importers and the revenue of the United States.

Imports arriving at the Port of Entry from Canada are placed in the custody of the United States to insure two things: (a) the rejection of goods not admissible as importations; and (b) to insure the collection of the duty due under the Tariff Act from the remainder, with the least practicable trouble and to insure their speedy delivery to the ultimate consignee.

We are not concerned here with the first of these objects.

With respect to the second class of goods arriving at the Port of Entry, they arrive "consigned" to the broker designated on the bill of lading and invoice. If that designated "person" is licensed as is the Petitioner, then it becomes Petitioner's duty to accept or reject the goods when they arrive. If accepted it is the business of the Petitioner to receive the title to these, subject to the rights of the United States, and to "enter" and "clear them of customs" that the common carrier, transporting them under a through bill of lading, may, at the earliest practicable moment, continue on its journey to deliver them to the actual importer or ultimate consignee from the Port. Petitioner "enters" them and "clears them from customs" by paying the estimated duty, and this it is authorized by the Government to do, either by drawing on the carrier for the amount due, including its fees, or by advancing its own money and thereafter billing its client, or by using the client's money of the kind designated by law as a proper medium for paying the duty, and

by assuming the obligation to pay any additional or increased duty which later may be found due. Its further duty is to compile and maintain records such as the Government demands and prescribes as necessary for the future such as correcting any error in computing the duty called for by the Tariff Act, or called for by any concealment or fraud practiced by the shipper in describing the goods delivered by the carrier for importation into the United States.

Only Petitioner, or its authorized agent, may make that entry. It is primarily liable under its bond for any mistakes that may be made. The Collector is immune from liability.

When these things have been done the shipment may proceed, but only then; and when that happens the goods so cleared are still moving in foreign commerce.

This service aids and fosters foreign commerce, and is an ingenious system established pursuant to authority of Congress to secure the Government against loss of duty or revenue, and to protect the importer.

The legal status of Petitioner as a customhouse broker arises from an Act of Congress. Its business and its dealings with its clients are governed to the minutest detail by that Act of Congress and by the Rules and Regulations Relating to Customhouse Brokers. These Rules are themselves authorized by Congress.

Petitioner's business is exclusively connected with the nation's foreign commerce. Its right to engage in that business depends on its license, for when the license is revoked its right to engage in that business ceases. Without a license it cannot act as a customhouse broker, irregardless of how efficient its individually licensed officers may be.

The District Court of Minnesota found that "customhouse brokers, involved herein, are established as federal instrumentalities and are engaged in interstate commerce in fa-

cilitating the free flow of commerce between the United States and the Dominion of Canada."

The Supreme Court of Minnesota held that Petitioner's business was local and intrastate; that it "remotely affects the commerce, if at all" and that without a Certificate of Authority the District Court was without jurisdiction, and that "defendant's motion to dismiss the action at the close of plaintiff's case therefore should have been granted." It therefore reversed the judgment and decision of the trial court.

Gibbons vs. Ogden, 22 U. S. 1, 6 L. ed. 23, is authority for the proposition that "the control of Congress over interstate business is complete"; but it is no authority for a holding that a state may, by oppressive laws and restrictions of its own, burden, interfere with and restrict "commerce."

The following sentences from that decision admit no misunderstanding:

> "The subject to be regulated is commerce; and . . . to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities and do not admit that it comprehends navigation. . . . Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, *and is regulated by prescribing rules for carrying on that intercourse*" (Italics supplied).

That is, Congress directly, and indirectly through the Treasury Department, has prescribed Rules for carrying on commerce between the United States and the Dominion of Canada, and other foreign countries. These Rules, like all Rules, are dead, until someone arrives designated and empowered to execute, to put into use and employ those Rules. Only then do rules become a living, useful force. In the case

at bar, and for the business and interests involved, Congress not only provided Rules for "carrying on" the trade and intercourse between nations, but evolved the means or instrumentalities necessary to make those Rules work. The result was, and is, customhouse brokers, trained by study or experience, or both, to render their specialized service in making those Rules effective for the purposes Congress intended to be realized. This same executed plan, devised to make the Rules effective Regulations of the intercourse between "nations and parts of nations," included the making of the licensed brokers responsible agents for the collecting of the revenue, as well as to provide responsible parties for fostering the "intercourse," or commerce. It would not do, it would not have been feasible or practicable, for obvious reasons, for Congress to provide that the Collectors of Customs should also be charged with the duty of collecting and receiving duty. It would have opened up too many avenues of escape for crafty importers and exporters, and would have invited fraud and trickery. And so the responsibility for estimating and paying the correct amount of duty was imposed on the licensed customhouse broker, in lieu of which he was given the right to charge either the importer or the exporter for his services, depending on who actually designates him as the broker for purposes of clearance at the Port of Entry.

"The mind can scarcely conceive a system for regulating commerce between nations" which detaches from that system those persons who make the regulations of commerce work according to the plans of Congress. If the broker is using and applying the Rules devised by the Government for carrying on intercourse between nations it must follow that he is engaged in that business; and if engaged in that business he is granted the fruits of the business governed by the Rules and by the law which created the Rules. This system of regulating foreign commerce represents the wis-

dom and discretion of Congress, and furnishes the restraint by which abuse of the Regulations is reduced to a minimum. The apparent conflict in the objects attained arises from the fact that here there is an apparent blending of the power to lay and collect taxes (duties on importations) and the power to "regulate commerce." Through the licensed customhouse broker, amply bonded, the two powers of Congress are simultaneously exercised. The licensed customhouse broker is the medium, disconnected so far as Government employment is concerned, for achieving both objects—the protection of importers and the revenue of the United States. The object of the Regulation is to improve the intercourse between nations, and thus to cultivate the income, the revenue, of the United States. This object is realized by the use of the licensed customhouse broker in carrying out the Rules adopted pursuant to Act of Congress for regulating commerce between nations. Remove these, and chaos would follow. They are removed if they are not adjuncts, instruments, employed by the United States to aid the free flow of foreign commerce, because if they do not so serve the Government the means devised by Congress to do so are not responsible to the Treasury Department, and the licenses granted by the Government would be a futile, useless luxury. Why should the Government have reserved to itself the right to revoke the license of a customhouse broker if he be merely engaged in intrastate business, enjoying the privilege of meddling with foreign commerce only for his own profit and selfish purposes? To ask the question is to reduce the claim to an absurdity.

In seeking justification for the holding that a licensed customhouse broker is only an independent contractor, engaged in local and intrastate business, and therefore subject to the Minnesota Foreign Corporation Act, the Supreme Court of Minnesota refers to "the confusion that has resulted in an

attempt to define interstate commerce," and says:

> "Despite this well defined power of Congress over strictly interstate commerce, it cannot be extended so as to include regulatory control over a business which has no substantial relation to such commerce and does not involve a question of national concern. To permit such control would be voluntarily to eliminate the distinction between what is national and what is local and create a completely centralized government. *National L. R. Board vs. Jones & Laughlin Steel Corp.*, 301 U. S. 1" (R. 150). . . .
>
> "When abuses creep into our national economy or where other problems arise which are of vital public concern and present issues of national public policy, it is natural and *commendable* that the commerce clause should be given a broad interpretation so as to sustain legislation by the Congress having for its *laudable* purpose the elimination of abuses and the solution of these problems" (Italics supplied) (R. 157 (742)). . . .
>
> "It is entirely consistent with these decisions (the citations) and in harmony therewith for the courts, when confronted by varying factual situations involving the commerce clause, to *preserve whenever possible that fine balance between national and state solidarity which has been characteristic of our Government during its century and a half of its existence*" (Italics supplied) (R. 157 (742)).

The state's rights doctrine is not involved here. Ever since 1789 Congress has exercised its power to regulate commerce among nations and among the states, and where Congress has acted, as is the case here, its powers are supreme and exclusive.

The error of the Supreme Court of Minnesota appears to spring from the fact that it failed to note that the licensed customhouse broker and his business is under the exclusive and absolute control and regulation, in the conduct of his business, of the Government. This is evident when we consider the Court's analysis of the *Puget Sound Stevedoring*

Company case, supra. The Supreme Court of Minnesota, in an effort to distinguish that case, said:

> "While the case of *Puget Sound Stevedoring Co. vs. State Tax Comm.*, 302 U. S. 90, 58 S. Ct. 72, 82 L. ed. 68, is not squarely in point, we believe that that phase of it having to do with the furnishing of employees to the steamship companies for stevedoring duties where the company did not exercise any control or direction over their duties is more closely analogous. In that case the court (this Honorable Court) determined that where the stevedoring corporation furnished the laborers and retained supervision and control over their activities, where they actually assisted in loading and unloading the articles of commerce, such activity was interstate commerce; but that if these employees had been furnished to the steamship companies without supervision or direction, then there was no direct relation to the commerce and the employer would be but an independent contractor. Similarly, the customhouse broker, in paying the duties, is but an independent contractor under his contractual relationship with the shipper" (R. 134 (739)).

It is respectfully submitted that the Supreme Court of Minnesota overlooked an important part of that decision. The omitted part of the Puget Sound Stevedoring case reads:

> "The fact is not important that appellant does business as an independent contractor as long as the business that it does is commerce immune from regulation by the states. What is decisive is the nature of the act, not the person of the actor." (82 L. ed. 72.)

By overlooking this principle in the Puget Sound Stevedoring case the Supreme Court of Minnesota was led to commit error by concluding that an independent contractor cannot have the protection of the commerce clause, and in holding that "similarly, the customhouse broker, in paying the duties, is but an independent contractor under his con-

tractual relationship with the shipper," and to hold by implication that customhouse brokers are furnished to foreign commerce "without supervision or direction" by the licensor, the Government of the United States. This use and construction of the Puget Sound Stevedoring case by the Supreme Court of Minnesota is unwarranted because the Rules and Regulations Relating to Customhouse Brokers and the Act of Congress conclusively prove the contrary. The customhouse broker is designated and licensed by the Government to aid importers and exporters to effectively pursue their business in order that the regulation of commerce with foreign nations, committed by the Constitution to the exclusive control of Congress, may not only be effective, but also helpful to the "intercourse" between "nations and parts of nations." The Federal Government initiates, retains and exercises complete and exclusive control over the customhouse broker and his business. The error of the Supreme Court of Minnesota in its use and application of the Puget Sound Stevedoring Company case is emphasized when we refer to the actual situation and ruling as there stated by this Honorable Court. We quote (pp. 70 and 71):

> "A statute of the state of Washington provides that for the privilege of engaging in business activities within the state a tax shall be payable by persons so engaged, payment to be made according to a designated measure. . . . This general provision is broad enough to cover the business of a stevedore.
>
> Appellant, the Puget Sound Stevedoring Company, is a Washington corporation. It is engaged in the general stevedoring business at Seattle and at other ports on Puget Sound. At times it contracts with a shipowner or shipmaster to load or discharge a vessel through its own employees, controlling and directing the work itself. The great mass of its business, as we were informed upon the argument, is done in that way. At times, however, even though comparatively infrequently, it makes a different kind of contract which changes es-

sentially its relation to the ship. In this second form of contract it does not undertake to control, direct or supervise the work. It (the Stevedoring Company) 'merely collects the longshoremen and supplies them to the vessel,' advancing their pay at the completion of the job and 'billing the ship and her owner the amount of the payroll plus a commission for services.' All vessels served by the appellants are engaged in interstate and foreign commerce."

Those served here are all doing foreign commerce.

The Stevedoring Company brought suit to enjoin the enforcement of the tax mentioned. The trial court dismissed the bill. On appeal the Supreme Court of Washington affirmed the decision of the trial court "upon the ground that the taxpayer was an independent contractor engaged in a local business." This decision of the State Court was modified by the Supreme Court of the United States and this Honorable Court held:

"The business of appellant (the Puget Sound Stevedoring Co.), in so far as it consists of the loading and discharge of cargoes by longshoremen subject to its own direction and control, is interstate or foreign commerce.

Transportation of a cargo by water is impossible or futile unless the thing to be transported is put aboard the ship and taken off at destination. A stevedore who in person or by servants does work so indispensable is as much an agency of commerce as shipowner or master. 'Formerly the work was done by the ship's crew; *but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class as clearly identified with maritime affairs as are the mariners*' (Italics supplied). (Citations.) No one would deny that the crew would be engaged in interstate or foreign commerce if busied in loading or unloading an interstate or foreign vessel. (Citations.) The longshoreman busied in the same task bears the same relation to the commerce that he serves. . . .

The business of loading and unloading being inter-

state or foreign commerce, the State of Washington is not at liberty to tax the privilege of doing it by exacting in return therefor a percentage of the gross receipts.

. . . . . .

The fact is not important that appellant does business as an independent contractor as long as the business that it does is commerce immune from regulation by the states. "An independent contractor undertaking to navigate a vessel would have the same protection as a pilot agreeing to navigate it himself." (From pages 70 to 72, 82 L. ed.)

The transportation of the goods from Canada into the United States is foreign commerce. This transportation would be futile for the importation would be impossible without the entry of the goods and their clearance at the Port of Entry. The licensed broker is as "indispensable" to the moving of the goods from the Port of Entry, in the absence of the owner of the goods, as is the carrier and the Collector. "No one would deny" that if the owner of the importations traveled with the carrier and cleared his goods at the Port that he "would be engaged in interstate or foreign commerce. The licensed broker busied in the same task bears the same relation to the commerce he serves." If the broker be an independent contractor, he is still entitled to the protection due to agencies engaged in foreign commerce.

The Minnesota Court's use of the excerpt from the *National Labor Relations Board vs. Jones and Laughlin Steel Corporation*, 301 U. S. 1, 81 L. ed. 893, is inapt. In that case, against the attempt of the defendant corporation to have the National Labor Relations Act invalidated, Justice Hughes properly observed:

"That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

No one will question the truth of that self-evident propo-

sition, but that proposition is not at stake here, for the case at bar relates to an exercise of the powers of Congress over commerce.

The Minnesota Court's quotation from *Wickard vs. Filburn*, 63 S. Ct. Rep. 82, is incomplete. The four paragraphs of the opinion in the *Wickard vs. Filburn case, supra*, which precedes the part quoted in the opinion deserve careful attention.

Finally, if it be assumed for the argument that the business of Petitioner is local and intrastate, yet it must be conceded that its conduct and operation of its business affects foreign and interstate commerce; that the Rules provided by Congress and the Treasury for the efficient movement of goods in foreign commerce, and for the protection of the public revenue, control Petitioner in its business. That being true, the power of Congress over foreign commerce protects Petitioner from burdens or restrictions imposed by state legislation because nothing done by the state may injuriously interfere with foreign and interstate commerce. The Supreme Court of Minnesota admits as much. That Court admits that customhouse brokers are required to be licensed ". . . but (it said) the sole purpose of that requirement is *to protect the collection of tariffs due the Federal Government*" (R. 153). (Italics supplied.)

And again it admits:

> "*Its* (Petitioner's) *duty as an agent* of the shipper *was merely to pay the customs duties* and make settlement subsequently with its principal, the shipper" (R. 153). "*He is at most an aid or facility to the commerce* and but remotely, if at all, affects it" (Italics supplied) (R. 153, 154).

The Court fails to note the important fact that the customhouse broker cannot act "to protect the collection of tariffs due the Federal Government unless licensed by the

Government, nor after the license has been revoked; and that when licensed he is furnished 'to aid in foreign commerce.'" However, the acts enumerated by the Court as business activities of the customhouse brokers are sufficiently important to show that their business affects foreign commerce which is under the exclusive control of Congress.

Petitioner, being a foreign corporation, is required by the Minnesota Foreign Corporation Act, *unless it is engaged in interstate commerce* (Italics supplied), to obtain a Certificate of Authority, and failing to do that "it shall forfeit and pay" to Minnesota "a penalty, not exceeding $1,000.00, and an additional penalty, not exceeding $100.00" per month for the time it transacts business without such Certificate of Authority. These penalties are recoverable in an action brought "in the District Court of any county" in which it has done business or in which it has property or a place of business "by an action, in the name of the State, brought by the Attorney General" (Sec. 20 (c), Appendix I, *infra*).

When and if a Certificate of Authority is obtained, it must pay a variety of fees, some of which are unavoidable and some of which are avoidable if its corporate structure remains static (Sec. 21 (a), Appendix I, *infra*). It must maintain, under arduous conditions, an agent on whom service of process may be made.

The action authorized to be maintained for the collection of the mentioned penalties is connected with dire consequences. Not having been authorized to do business in the state it must appear to defend the action in the state from which it is excluded and virtually in the county selected by its accuser. This involves great expense in addition to the penalties. Such an action is probably without a defense. The business it has carried on in good faith becomes destroyed. The judgment obtained in Minnesota is binding on the courts of its true domicile. The dangers from these

provisions, particularly when we take account of a business such as Petitioner's, are many and serious. Petitioner's business is dependent on the flow of foreign commerce and on the ability to secure a bond acceptable to the Collector. To exist and carry on its business Petitioner must follow the flow of commerce. It cannot be denied that at least 95 per cent of its business was taken from Portal in North Dakota to Noyes in Minnesota. Petitioner has no control, either by persuasion or other means, over that changed flow of commerce. It cannot lure it back nor command it to return to Portal, because the shippers are themselves dependent on the common carrier transporting their merchandise from the Dominion of Canada into the United States.

Manifestly, the provisions of the Minnesota Foreign Corporation Act are oppressive, for if they apply they destroy the life and business of the Petitioner.

But since Petitioner's business affects foreign commerce, Petitioner respectfully insists that the Minnesota Foreign Corporation Act is invalid as applied to this business, for without its service, and the service of other customhouse brokers, the Rules and Regulations of foreign commerce would remain so much dead wood.

> "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce.' (Citations.) The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. (Citations.) It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those

intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.

. . .

It is no answer to suggest . . . that the federal power to regulate intrastate transactions is limited to those who are engaged also in interstate commerce. The injury, and hence the power, does not depend upon the fortuitous circumstance that the particular person conducting the intrastate activities is, or is not, also engaged in interstate commerce. (Citations.) It is the effect upon interstate commerce or upon the exercise of the power to regulate it, not the source of the injury which is the criterion of Congressional power."

Chief Justice Stone, in *United States vs. Wrightwood Dairy Co.*, 62 S. Ct. 523, 527, 315 U. S. 110.

We conclude that Petitioner is protected by the exercised power of Congress over foreign commerce, and that the Minnesota Act has been illegally employed to strike down the judgment recovered against the Respondents.

The Constitution is the supreme law of the land. The judges in every state are bound by this supreme law "anything in the Constitution or laws of any state to the contrary notwithstanding". (Art VI, 2, 3 and Preamble).

The powers delegated to Congress, "save as excepted by the silence of the Constitution, or by positive limitation, are universal and affirmative. The Constitution provides only for judicial interpretation." The use of the powers conferred by the Constitution is indicated by Congressional legislation, and when the Supreme Court of the United States has pronounced Congressional legislation constitutional the legislation and the decision represent the supreme law of the land until such time as the Congress may constitutionally legislate a change. The decisions of the Supreme Court are not rendered to approve a sudden urge of Congress to eliminate some abuse developed in an industry, or "to sustain legislation by the Congress having for its laudable purpose

the elimination of abuses and the solution of these problems," nor to support or to oppose conflicting political claims concerning state's rights. No such consideration can affect or modify the constitutional rights of Petitioner, and the decisions of this Honorable Court may not be reconstructed or interpreted by an inferior court on any such premise. It is the duty of all citizens, and of all inferior courts as well, to apply the rules of law laid down by this Honorable Court in its interpretation of the Constitution applied to Congressional legislation.

The decision of the Supreme Court of Minnesota is invalid, and the judgment of the District Court of Minnesota should be reaffirmed and reinstated.

Dated December 31, 1943.

Respectfully submitted,

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APPENDIX

I.

CHAPTER 200, H. F. No. 818; Laws of Minnesota, 1935:

(Minnesota Foreign Corporation Act, Chapter 303; *Minnesota Statutes, 1941,* Vol. I, pp. 2260 to 2272; 7495-1 to 7495-30, *Mason's Minn. Statutes, 1927,* Vol. III, 1938 Supp.)

The material and relevant sections of the Minnesota Foreign Corporation Act involved herein read:

"CHAPTER 200, H. F. No. 818.

An Act relating to foreign corporations; providing for their admission to transact business in this State; for their withdrawal from this State; for the revocation of their authority to transact business in this State; for payment by them of certain license fees; for filing by them of annual reports; for the appointment by them of resident agents for service of process; for service of process on foreign corporations; for penalties and liabilities for violations of this Act; for the filing and recording of certificates of authority issued pursuant to this Act, and their effect as evidence; for the payment by foreign corporations of certain fees to the secretary of state and to registers of deeds; for the application of this Act to foreign corporations heretofore authorized to transact business in this State; for the repeal of *Mason's Minnesota Statutes of 1927,* Sections 7493, 7494 and 7495; and for an appropriation for administering this Act.

Be it enacted by the Legislature of the State of Minnesota:

. . . . . .

Sec. 2. Foreign corporations must have certificate of authority.—No foreign corporation shall transact business in this state unless it holds a certificate of authority so to do; and no foreign corporation whose certificate of authority shall have been revoked or cancelled pursuant to the provisions of this act shall be entitled to obtain a certificate of authority except in accordance

with the provisions of Section 19 of this Act. (Sec. 303.03, *Minn. Stat. 1941,* Vol. I.)

. . . . . .

Sec. 5. Requisites for certificates.—(a) In order to procure a certificate of authority to transact business in this state, a foreign corporation shall make application therefor to the secretary of state which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is organized;

(2) If the name of the corporation does not end with the word "Corporation", or the word "Incorporated" or the abbreviation "Inc.", or does not contain the word "Company" or the abbreviation "Co." not immediately preceded by the word "and" or the character "&", then the name of the corporation with the word or abbreviation which it agrees to add thereto for use in this State;

(3) The date of its incorporation and the period of its duration;

(4) The address of its principal office in the state or country under the laws of which it is organized;

(5) The address of its proposed registered office in this state and the name of its proposed registered agent in this state;

(6) That it irrevocably consents to the service of process upon it as set forth in section 13, of this act, or any amendment thereto;

(7) The names and respective addresses of its directors and officers;

(8) A statement of the aggregate number of shares having par value and of shares without par value which it shall have authority to issue, itemized by classes and series;

(9) A statement of the aggregate number of its issued or allotted shares having par value and of shares without par value, itemized by classes and series; and

(10) A statement that the officers executing the appli-

cation have been duly authorized so to do by the board of directors of the corporation.

(b) Such application shall be made on forms prescribed and furnished by the secretary of state, and shall be executed, acknowledged and verified by its president or a vice president, and by its secretary or an assistant secretary, and delivered to the secretary of state with authenticated copies of its articles of incorporation.

Sec. 6. Initial license fee to be $50.—At the time of making application for a certificate of authority the foreign corporation making such application shall pay to the state treasurer the sum of $50.00 as an initial license fee. (Sec. 303.07, *Minn. Stat. 1941*, Vol. I.)

. . . . .

Sec. 9. Must have office and agent.—Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(a) A registered office which shall be in a county where it has its principal place of business in this state, or if it has no place of business in this state then in any county where it does or proposes to do business;

(b) A registered agent, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a corporation having a business office identical with such registered office.

Sec. 10. Powers and duties.—A foreign corporation may from time to time change the location and address of its registered office. It may revoke the appointment of a registered agent provided it shall at the same time file an appointment of a new registered agent. It shall appoint a new registered agent in case of vacancy in the office, whether by death, resignation or otherwise, or because of the disqualification or incapacity of its registered agent. Such changes may be made by filing in the office of the secretary of state a statement setting forth:

(a) The name of the corporation;

(b) The address of its registered office;

(c) If the address of its registered office is to be

changed, the address to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent is to be changed, the name of its successor registered agent; and

(f) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed, acknowledged and verified by its president or a vice-president, and by its secretary or an assistant secretary. (Sec. 303.10, *Minn. Stat. 1941*, Vol. I.)

. . . . . .

Sec. 20. Foreign corporation may not maintain action unless licensed.— (a) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain an action in any court of (in) this state until such corporation shall have obtained a certificate of authority. Nor shall an action be maintained in any court by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority to transact business in this state shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets; provided that if such assignee shall be a purchaser without actual notice of such violation by the corporation, recovery may be had to an amount not greater than the purchase price; and provided further that this section shall not be construed to alter the rules applicable to a holder in due course of a negotiable instrument.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action in any court of this state.

(c) Any foreign corporation which transacts business in this state without a certificate of authority shall forfeit and pay to this state a penalty not exceeding

$1,000.00 and an additional penalty not exceeding $100.00 for each month or fraction thereof during which it shall continue to transact business in this state without a certificate of authority therefor. Such penalties may be recovered in the district court of any county in which such foreign corporation has done business or has property or has a place of business, by an action in the name of the state brought by the attorney general. (Sec. 303.20, *Minn. Stat. 1941*, Vol. I.)

Sec. 21. Fees.— (a) The secretary of state shall charge and receive the following fees for the following services:

(1) For filing an application for a certificate of authority, five dollars;

(2) For filing an annual report, five dollars;

(3) For filing articles of amendment or an instrument evidencing a reduction of stated capital, or a merger or consolidation, two dollars;

(4) For filing application for withdrawal and final report, five dollars;

(5) For filing a change of address of registered office or revocation or change of appointment of a registered agent, one dollar;

(6) For filing an application for reinstatement of a certificate of authority, five dollars;

(7) For issuing any certificate pursuant to the provisions of this act, two dollars;

(b) In addition thereto, in each instance in which he is required by this act to transmit a certificate to a register of deeds for record, the secretary of state shall charge and receive one dollar for recording such certificate with the register of deeds. (Sec. 303.21, *Minn. Stat. 1941*, Vol. I.)

. . . . . .

Sec. 25. Minnesota Foreign Corporation Act.—This act may be cited as the Minnesota Foreign Corporation Act. (Sec. 303.01, *Minn. Stat. 1941*, Vol. I.)

. . . . . .

II.

There is involved the construction and validity of "Rules and Regulations Relating to Customhouse Brokers" issued by the United States Treasury Department, Office of the Secretary, Washington, April 16, 1936, Department Circular No. 559, (Filed with the Division of the Federal Register, April 20, 1936, 9:48 a. m.) as amended. Exh. "A."

The parts of said Rules and Regulations here material provide:

> "By virtue of and pursuant to the authority vested in me, including the authority conferred by section 641 of the Tariff Act of 1930, as amended, the following regulations are hereby promulgated:
>
> Sec. 1. Licenses for Brokers Required—Qualifications—Regulations Authorized—(a) Tariff Act of 1930, Section 641 (a), as amended:
>
> . . . . . Except as provided in subdivision (c) of this section, no person shall transact business as a customhouse broker without a license granted in accordance with the provisions of this subdivision, but nothing in this section shall be construed to authorize the requiring of a license in the case of any person transacting at a customhouse business pertaining to his own importations. (Aug. 26, 1935, Ch. 689, sec. 3, 49 Stat. 864) (19 U. S. C. A. Sec. 1641 (a).)
>
> (b) No representative of the Treasury Department shall recognize or deal with any person transacting the business of a customhouse broker, or any employee, officer, or agent thereof, unless such person is licensed as a customhouse broker in accordance with the provisions of these regulations.
>
> (c) Tariff Act of 1930, section 641 (a); (19 U. S. C. A. Sec. 1641 (a)): The Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships, and may require as a condition

to the granting of any license, the showing of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters. No such license shall be granted to any corporation, association or partnership unless licenses as customhouse brokers have been issued to at least two of the officers of such corporation or association, or two of the members of such partnership, and such licenses are in force. . . . .

(d) Tariff Act of 1930, section 641 (d), 19 U. S. C. A. Sec. 1641 (d), as amended:

The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section. . . . . (Aug. 26, 1935, Ch. 689, sec. 4, 49 Stat. 865.)

Sec. 2. DEFINITIONS—When used in these regulations—

(a) Customhouse Broker.—The term "customhouse broker" includes any person who, acting on behalf of others, transacts customs business not limited to a kind described in section 7 of these regulations.

(b) TREASURY DEPARTMENT OR ANY REPRESENTATIVE THEREOF.—The term "Treasury Department or any representative thereof" includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office or unit. . . . . .

(d) PERSON.—The word "person" includes corporations, associations, and partnerships.

(e) BOOKS AND PAPERS.—The term "books and papers" includes all books, accounts, records, papers, documents, and correspondence of a customhouse broker relating to his customs business.

Sec. 3. APPLICATION FOR LICENSE AND INVESTIGATION OF APPLICATION.—(a) A person desiring to engage in the business of a customhouse broker shall submit an application to the Committee, stating his qualifications for a license. The application shall be under oath and in such

standard form as the Committee, with the approval of the Secretary, shall have prescribed. . . . . .

(d) . . . . . In the case of a corporation, association, or partnership, the application will be rejected by the Committee unless it appears that the officers or members who are licensed customhouse brokers are to exercise responsible supervision and control of the transaction of the customs business of such corporation, association, or partnership. An individual who is unable for any reason to take the oath of allegiance and to support the Constitution of the United States shall not be licensed. . . . .

Sec. 4. ISSUANCE OR DENIAL OF LICENSE.—(a) If the Committee finds that the applicant is qualified, the Committee will issue a license in such standard form as the Committee, with the approval of the Secretary of the Treasury, shall have prescribed. The license shall be forwarded to the appropriate collector of customs, who shall deliver it to the licensee after making a record thereof in a roster of licensed brokers which shall be maintained in the customhouse in such manner that it will be readily accessible to the proper customs officers and employees. . . . . .

Sec. 8. BOOKS AND PAPERS.—(a) Tariff Act of 1930, section 641 (d), as amended:

The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations requiring the keeping of books, accounts, and records by customhouse brokers, and the inspection thereof, and of their papers, documents, and correspondence by, and the furnishing by them of information relating to their business to, any duly accredited agent of the United States. (Aug. 26, 1935, Ch. 689, sec. 4, 49 Stat. 865.)

(b) Each licensed customhouse broker shall maintain correctly and in orderly itemized manner, and keep current, records of account reflecting all his financial transactions as a customhouse broker. He shall keep

and maintain on file a copy of each entry made by him, and copies of all his correspondence and other papers relating to his customs business.

(g) All of the books and papers required by the foregoing provisions of this section shall be kept on file for at least five years and maintained in such manner that they may readily be examined. Any or all of such books and papers shall be made available to duly accredited agents of the United States on demand therefor within five years after their preparation or receipt by the broker, or within such longer period of time during which they remain in the possession of the broker. The broker shall also furnish such additional information regarding his activities as a licensed customhouse broker as such agents may require.

Sec. 9. OTHER DUTIES AND OBLIGATIONS OF LICENSED CUSTOMHOUSE BROKERS.—(a) The duties and obligations specified in this section and elsewhere in these regulations relating to customhouse brokers are not to be construed as exclusive, since the Secretary of the Treasury may deem conduct not within the purview of any specification in these regulations to be such as would also warrant the suspension or revocation of a license under the authority conferred upon him by section 641 of the Tariff Act of 1930, as amended.

(b) No licensed customhouse broker shall permit his license or his name to be used by or for any unlicensed person, or by or for any broker whose license is under suspension, in the solicitation, promotion, or performance of any customs business or transaction.

(c) No licensed customhouse broker shall accept or retain employment from or with an unlicensed employer to transact customs business for others than the employer in such manner that the fees or other benefits resulting from the services rendered by the licensed broker for others inure to the benefit of the unlicensed employer.

(i) No licensed customhouse broker shall suggest to a client or a prospective client a plan known to be illegal

for evading payment of any duty, tax, or other debt or obligation owing to the Government. . . . .

(m) Each licensed customhouse broker shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable in respect of the client's customs business. . . . . .

(q) Each licensed customhouse broker shall exercise due diligence in answering correspondence, in making financial settlements, and in preparing, or assisting in the preparation of, and filing documents, affidavits, and other papers relating to any matter handled by him as a customhouse broker. . . . . .

Sec. 11. CANCELLATION OF LICENSES.—(a) Tariff Act of 1930, section 641 (a): . . . . . Any license granted to any such corporation, association, or partnership shall be deemed revoked if for any continuous period of more than sixty days after the issuance of such license there are not at least two officers of such corporation or association or two members of such partnership who are qualified to transact business as customhouse brokers. . . . . .

(c) A customhouse broker's license may be cancelled upon written application to the Committee and surrender of the license certificate, but before granting the request, inquiry shall be made by the Committee to ascertain whether it has been made in order to evade proceedings for revocation or suspension of the license, in which event the request shall be denied, unless the Secretary of the Treasury shall otherwise order.

III.

The Code of the Laws of the United States of America

Title 19.

Customs Duties

Section 1. Organization of customs service

Except as hereinafter provided the reorganization of the customs service made by the President and communicated to Congress under date of March 3, 1913, shall, until otherwise provided by Congress, constitute the permanent organization of the customs service. (Aug. 24, 1912, c. 355, Par. 1, 37 Stat. 434.)

Section 2. Rearrangement and limitation of districts; changing locations

The President is authorized from time to time, as the exigencies of the service may require, to rearrange, by consolidation or otherwise, the several customs-collection districts and to discontinue ports of entry by abolishing the same or establishing others in their stead;

Provided, That the whole number of customs-collection districts, ports of entry, or either of them, shall at no time be made to exceed those established and authorized as on August 1, 1914, except as the same may thereafter be provided by law. The collector of customs of each customs-collection district shall be officially designated by the number of the district for which he is appointed and not by the name of the port where the headquarters are situated and the President is authorized from time to time to change the location of the

headquarters in any customs-collection district as the needs of the service may require. (Aug. 1, 1914, c. 223, Par. 1, 38 Stat. 623; May 29, 1928, c. 901, Par. 1 (19), 45 Stat. 987.)

. . . . .

Sec. 197. Duties, how payable

Except as provided in the following section all duties upon imports shall be collected in ready money, and shall be paid in gold and silver coin, coin certificates, demand Treasury notes, issued under the authority of the Acts of July 17, 1861, chapter 5, and February 12, 1862, chapter 20, and such other certificates or Treasury notes as may by law be declared receivable in payment thereof. (R. S. Pars. 3009, 3473; Feb. 27, 1877, c. 69, Par. 1, 19 Stat. 247, 249.)

. . . . .

Sec. 232. Definition of "port"

The word "port", as used in this title, may include any place from which merchandise can be shipped for importation, or at which merchandise can be imported. (R. S. Par. 2767.)

. . . . . .

Sec. 1481. Invoice; contents—In general

(a) All invoices of merchandise to be imported into the United States shall set forth—

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if it be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including

the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and

(10) Any other facts deemed necessary to a proper appraisement, examination, and classification, of the merchan-

dise that the Secretary of the Treasury may require.

Shipments not purchased and not shipped by manufacturer

(b) If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

Purchases in different consular districts

(c) When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 1482 of this chapter, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.

Exceptions by regulations

(d) The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable. (June 17, 1930, c. 497, Title IV, Par. 481, 46 Stat. 719.)

Sec. 1482. Certified Invoice—Certification in general

(a) Every invoice covering merchandise exceeding $100 in value shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States—

(1) For the consular district in which the merchandise was manufactured, or purchased, or from which it was to be delivered pursuant to contract;

(2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.

Declaration

(b) Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the Secretary of the Treasury, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice so produced, and that all the statements contained in such invoice and in such declaration are true and correct.

Making and signing

(c) Every certified invoice shall be made out in triplicate, or, for merchandise intended for immediate transportation under the provisions of section 1552 of this chapter, in quadruplicate, if desired by the shipper, and shall be signed by the seller or shipper, or the agent of either; but a person who has no interest in the merchandise except as broker or forwarder shall not be competent to sign any such invoice. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.

Certified under existing law

(d) Such invoices shall be certified in accordance with the provisions of existing law.

Disposition

(e) The original of the invoice and, if made, the quadruplicate shall be delivered to the exporter, to be forwarded to the consignee for use in making entry of the merchandise, and the triplicate shall be promptly transmitted by the consular officer to the collector of customs at the port of entry named in the invoice. The duplicate shall be filed in the office of the consular officer by whom the invoice was certified, to be there kept until the Secretary of State authorizes its destruction.

Certification by others than American consul

(f) When merchandise is to be shipped from a place so remote from an American consulate as to render impracticable certification of the invoice by an American consular officer, such invoice may be certified by a consular officer of a nation at the time in amity with the United States, or if there be no such consular officer available such invoice shall be executed before a notary public or other officer having authority to administer oaths and having an official seal:

Provided, That invoices for merchandise shipped to the United States from the Philippine Islands, the Virgin Islands, American Samoa, the island of Guam, or the Canal Zone may be certified by the collector of customs or the person acting as such, or by his deputy.

Effective date

(g) This section shall take effect August 16, 1930. (June 17, 1930, c. 497, Title IV, Par. 482, 46 Stat. 720.)

Sec. 1483. Consignee as owner of merchandise

For the purposes of this subtitle—

(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees.

(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 1484 (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof. (June 17, 1930, c. 497, Title IV, Par. 483, 46 Stat. 721.)

Sec. 1484. Entry of merchandise—Requirement and time

(a) Except as provided in sections 1490, 1498, 1552, and 1553 and in subdivision (j) of section 1336 of this chapter, and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse within forty-eight hours, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time.

Production of certified invoice

(b) No merchandise shall be admitted to entry under the provisions of this section without the production of a certified invoice therefor, except that entry may be permitted if—

(1) The collector is satisfied that the failure to produce such invoice is due to causes beyond the control of the person making entry;

(2) Such person makes a verified declaration in writing that he is unable to produce such invoice and (A) files therewith a seller's or shipper's invoice, or (B) if he is not in possession of a seller's or shipper's invoice files therewith a statement of the value, or the price paid, in the form of an invoice; and

(3) Such person gives a bond for the production of such certified invoice within six months.

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this subdivision as he deems advisable.

Production of bill of lading

(c) The consignee shall produce the bill of lading at the time of making entry, except that—

(1) If the collector is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to the collector may be accepted in lieu thereof;

(2) The collector is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to the collector, in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve the

collector of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making the collector a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and

(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (h) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

Signing and contents

(d) Such entry shall be signed by the consignee, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.

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Entry on carrier's certificate

(h) Any person certified by the carrier bringing the merchandise to the port at which entry is to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, may make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483.

Entry on duplicate bill of lading

(i) Any person may, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made, make entry for the merchandise in respect of which such bill of lading is issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483, except that such person shall make such entry in his own name.

Sec. 1485. Declaration—Requirement; form and contents.

(a) Every consignee making an entry under the provisions of section 1484 of this title shall make and file therewith, in a form to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true; in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the collector any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

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Liability of consignee for increased duties

(d) A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of a consignee.

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Sec. 1490. General orders—Incomplete entry

(a) Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the collector, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the collector believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.

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Sec. 1505. Payment of duties

The consignee shall deposit with the collector, at the time of making entry, unless the merchandise is entered for warehouse or transportation, or under bond, the amount of duty estimated to be payable thereon. Upon receipt of the appraiser's report and of the various reports of landing, weight, gauge, or measurement the collector shall ascertain,

fix, and liquidate the rate and amount of duties to be paid on such merchandise as provided by law and shall give notice of such liquidation in the form and manner prescribed by the Secretary of the Treasury, and collect any increased or additional duties due or refund any excess of duties deposited as determined on such liquidation. (June 17, 1930, c. 497, Title IV, Par. 505, 46 Stat. 732.)

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Sec. 1513. Collector's immunity

No collector or other customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this chapter be entitled to protest or appeal from the decision of such collector or other officer. (June 17, 1930, c. 497, Title IV, Par. 513, 46 Stat. 734.)

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Sec. 1641. Customhouse brokers—Regulations for licensing.

(a) The Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships, and may require as a condition to the granting of any license, the showing of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters. No such license shall be granted to any corporation, association, or partnership unless licenses as customhouse brokers have been issued to at least two of the officers of such corporation or association.

or two of the members of such partnership, and such licenses are in force. Any license granted to any such corporation, association, or partnership shall be deemed revoked if for any continuous period of more than sixty days after the issuance of such license there are not at least two officers of such corporation or association or two members of such partnership who are qualified to transact business as customhouse brokers. Except as provided in subdivision (e) of this section, no person shall transact business as a customhouse broker without a license granted in accordance with the provisions of this subdivision, but nothing in this section shall be construed to authorize the requiring of a license in the case of any person transacting at a customhouse business pertaining to his own importations.

Revocation or suspension; appeal

(b) The collector or chief officer of the customs may at any time, for good and sufficient reasons, serve notice in writing upon any customhouse broker so licensed to show cause why said license shall not be revoked or suspended, which notice shall be in the form of a statement specifically setting forth the ground of complaint. The collector or chief officer of customs shall within ten days thereafter notify the customhouse broker in writing of a hearing to be held before him within five days upon said charges. At such hearing the customhouse broker may be represented by counsel, and all proceedings including the proof of the charges and the answer thereto, shall be presented, with the right of cross-examination to both parties, and a stenographic record of the same shall be made and a copy thereof shall be delivered to the customhouse broker. At the conclusion of such hearing the collector or chief officer of customs shall forthwith transmit all papers and the stenographic report of the hearing, which shall constitute the record in the case,

to the Secretary of the Treasury for his action. Thereupon the said Secretary of the Treasury shall have the right to revoke or suspend the license of any customhouse broker shown to be incompetent, disreputable, or who has refused to comply with the rules and regulations issued under this section, or who has, with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client, or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement. . . . . .

Prior licenses

(c) Licenses issued under section 415 of Title 19 (Repealed) or under the provisions of subdivision (a) of this section prior to August 26, 1935, shall continue in force and effect, subject to suspension and revocation as provided in subdivision (b) of this section.

Regulations by Secretary

(d) The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations requiring the keeping of books, accounts, and records by customhouse brokers, and the inspection thereof, and of their papers, documents, and correspondence by, and the furnishing by them of information relating to their business to, any duly accredited agent of the United States. (June 17, 1930, c. 497, Title IV, Par. 641, 46 Stat. 759; Aug. 26, 1935, c. 689, Pars. 3-5, 49 Stat. 864, 865.)